United States Court of Appeals for the Second Circuit



APPENDIX

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United States Court of Appeals

For the Second Circuit

NECTARIOS KOUPETORIS,

Plaintiff-Appellant,

-against-

KONKAR INTREPID CORP.,

Defendant-Appellee

On Appeal from the United States District Court for the Southern District of New York.

Appellant's Appendix



HERBERT LEBOVICI
Of Counsel

LEBOVICI & SAFIR
Attorneys for Plaintiff-Appellant
15 Maiden Lane
New York, N.Y.
(212) 233-6165

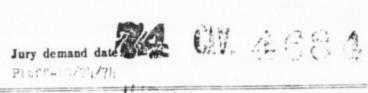
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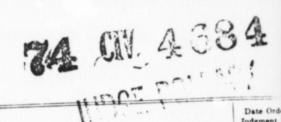
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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

NECTARIOS KOUPETORIS,

Plaintiff,

COMPLAINE

- against -

KONKAR INTREPID CORP., and KONKAR : TRIAL BY JURY MARITIME NEW YORK AGENCIES, LTD.,

TRIAL BY JURY

Defendants.

ACTION UNDER SPECIAL RULE FOR SEAMEN TO SUE WITHOUT PRE-PAYMENT OF FEES, ETC.

The plaintiff complaining of the defendants respect-

AS AND FOR A FIRST CAUSE OF ACTION

FIRST: That at all the times herein KONKAR INTREPID CORP., was and still is a foreign corporation organized and existing pursuant to the laws of the Republic of Liberia.

SECOND: That at all the times herein KONKAR MARITIME NEW YORK AGENCIES, LTD., was and still is a domestic corporation

organized and existing pursuant to the laws of the State of New York.

THIRD: Upon information and belief that at all the times herein KONKAR INTREPID CORT, had an office for the regular transaction of and was doing business in the Borough of Hanhattan, City and State of New York.

FOURTH: That at all the times herein the KONKAR INTREPID was and still is a merchant vessel and at all the times herein flew the flag of the Republic of Liberia.

FIFTH: Upon information and belief that the said flag was at all the times herein a flag of convenience having no bona fide, social, economic or political ties with the Republic of Liberia.

SIXTH: Upon information and belief that during all the times herein the defendants or one or more of them or individually or together engaged in the operation and control of the KONKAR INTREPID in the operation of said vessel in foreign commerce.

SEVENTH: Upon information and belief that at all the times the defendants were engaged in the business of operating the KONKAR INTREPID in foreign commerce of the United States.

EIGHTH: Upon information and belief that at all
the times herein a majority of the stock of each of the
defendant corporations was owned and/or controlled by citizens
and/or permanent residents of the United States.

NINTH: Upon information and belief that at all the times herein the said KONKAR INTREPID was operated from the principal office of the defendants in the Borough of Manhattan, City and State of New York.

TENTH: Upon information and belief that at all the times herein all and each of the said defendants were commercial domiciliaries of the Borough of Manhattan, City and State of New York.

ELEVENTH: Upon information and belief that at all the times herein the principal business of the KONKAR INTREPID and the principal contacts of the business thereof and of the respective defendants was with ports, places and transactions of the United States.

TWELFTH: That the contacts of the transaction herein are "substantial" within the meaning of the applicable law as set forth in Hellenic Lines Ltd. v. Rhoditis, 398 U.S. 306 and Bartholomew v. Universe Tankships Inc., 263 F.2d 437 and by reason thereof the plaintiff is entitled to prosecute his claim pursuant to the provisions of an Act of Congress

known as the Merchant Marine Act of June 5, 1930, \$533 Chapter 250, 41 Stat. 1007, as amended and commonly known as the Jones Act.

THIRTEENTH: That on or about the 28th day of February 1974, the plaintiff was duly engaged by the defendants, or one or more of them, their servants or employees thereof to serve as a seaman, to wit, as a chief engineer about the KONKAR INTREPID under agreement to be paid regular wages and found plus overtime and continued in such service until on or about the 19th day of July, 1974.

FOURTEENTH: That on or about the 19th day of July, 1974, while the said KONKAR INTREPID was on navigable waters in the Fort of Baltimore, Maryland, and while in the performance of orders previously given, by reason of the negligence of the said defendants, their agents, servants and/or employees or one or more of them, and/or because of the unseasorthiness of the said KONKAR INTREPID the plaintiff was caused to be severely injured and disabled.

plaintiff has been caused to be severely and permanently injured and damaged; has been caused to lose large sums of money that he otherwise would have earned in the pursuit of his vocation as a merchant seamen; has been caused to spend large sums of money to maintain himself ashore whereas board

would normally have been provided to him by the vessel on which he was working; has been caused to spend large sums of money for medical care and attention and will be so caused to spend large sums of money in the future, and has otherwise been permanently damaged and will be caused to lose or spend large sums of money in the future that he otherwise would not have been caused to lose or spend.

SIXTEENTH: That the plaintiff has been cause to suffer much agony, pain and mental suffering that he otherwise would not have been caused to suffer and will be so caused in the future and by reason of the fallure of the defendants to provide appropriate medical care and attention that the plaintiff is and will be in need of.

SEVENTEENTH: That jurisdiction is asserted by virtue of the Jones Act and the General Maritime Law.

EIGHTEENTH: That by reason of the premises plaintiff has been damaged in the sum of \$50,000.

ALTERNATIVELY AS AND FOR A SECOND CAUSE OF ACTION AGAINST THE DEFENDANTS.

NINETEENTH: Plaintiff repeats, reiterates and realleges with the same force and effect as those set forth at length herein paragraphs numbered FIRST through EIGHTEENTH.

TWENTIETH: Upon information and belief the law of

in relevant part, at all the times herein provided as follows:

"Adoption of General Maritime Law. - Insofar as it does not conflict with any other provision of this Title, the non-statutory general Maritime Law of the United States of America is hereby declared to be and is hereby adopted as the general Maritime Law of the Republic of Liberia.***

"Jurisdiction. -All causes of action arising out of, or under, this Title are hereby declared and shall be cognizable before the Circuit Courts of the Republic sitting in Admiralty, but except as otherwise specifically provided in this Title, the provisions of this section shall not be deemed to deprive other courts, of Liberia or elsewhere of jurisdiction to enforce such causes of action."

TWENTY-FIRST: That by reason of the premises and the unseaworthiness of the KONKAR INTRIPID causing injury to the plaintiff, alternatively to recovery under the first cause of action herein, the plaintiff will be entitled to recover for the damages sustained by him by reason of the provisions of the law of Liberia as such law incorporates the general Maritime Law of the United States.

WHEREFORE, plaintiff demands damages against the defendants or one of more of them in the amount of \$50,000 together with interest, costs and disbursements as may be appropriate.

PECHNER, SACKS, DORF-MAN, ROSEN & RICHARDSON of Lennsylvania

of Counsel

LEBOVICI & SAFIR Attorneys for Plaintiff

By: Herbert Lebardet

A Member of the Firm

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

NECTARIOS KOUPLTORIS,

Plaintiff,

- against

KONKAR INTREPID CORP. and KONKAR MARITIME NEW YORK AGENCIES, LTD.

Defendant.

NOTICE OF APPEARANCE

74 Civil 4684 (MP)

Sir :

PLEASE TAKE NOTICE, That the Defendant

hereby appears in the above entitled action, and that we are retained as Attorneys for it therein, and hereby demand that a copy of the complaint and all other papers in this action be served on us at our office below designated.

Dated: New York, New York

June 30, 1975 XXXXXXX

KIRLIN, CAMPBELL & KEATING Attorneys for Defendant

120 Broadway New York, New York 10005.

LEBOVICI AND SAFIR

Attorney for Plaintiff

15 Maiden Lane New York, New York 10038 SIRS:

PLEASE TAKE NOTICE that, upon the annexed affidavit of Sotiris D. Tselentis, and upon all the pleadings and proceedings heretofore had in this action, the undersigned will move this Court at Room 2102 thereof, at the United States Courthouse, Foley Square, New York on the 21st day of July, 1975 at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard for an order 1.) pursuant to Rule 12b(1) and (6) of the Federal Rules of Civil Procedure, dismissing the complaint against Konkar Maritime New York Agencies, Ltd. on the ground that it does not employ the plaintiff and does not own or operate the KONKAR INTREPID and is therefore not a proper party defendant; 2.) pursuant to Rule 12b(2) and (5) of the Federal Rules of Civil Procedure dismissing the complaint as against Konkar Intrepid Corp. on the ground of lack of personal jurisdiction and for insufficient service of process; 3.) pursuant to Rule 12b(1) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction as against both defendants on the grounds that the Jones Act and the General Maritime Law are inapplicable or, in the alternative, for an order pursuant to Rules 12b(3) and 56 of the Federal Rules of Civil Procedure dismissing the action against both defendants on the ground that this is not a convenient forum

in which to litigate this action, and for such other, further and different relief as to the Court may seem just and proper.

Dated: New York, New York, 1975

Yours, etc.,
KIRLIN, CAMPBELL & KEATING

JOHN R. GERAGHTY

Ву

A Member of the Firm

Attorneys for Defendants Office & P. O. Address 120 Broadway New York, New York 10005

TO: LEBOVICI & SAFIR, ESQS.
Attorneys for Plaintiff
15 Maiden Lane
New York, New York 10038

AFFIDAVIT OF SOTIRIOS D. TSELENTIS REND IN SUPPORT OF MOTION FOR JUDGMENT.

State of New York) : ss.:
County of New York)

Sotiris D. Tselentis, being duly sworn, deposes and says:

I am Vice President of Konkar Maritime New York Agencies,

Ltd., and I am fully familiar with the ownership, operation and

control of the KONKAR INTREPID, Konkar Intrepid Corp., and

Konkar Maritime New York Agencies, Ltd.

This affidavit is respectfully submitted in support of the defendants' motion for an order dismissing the action against Kon'car Maritime New York Agencies, Ltd. on the ground that it did not employ the plaintiff and did not own, operate or control the KONKAR INTREPID and is therefore not a proper party defendant, dismissing the action against Konkar Intrepid Corp. for invalid service of process and lack of personal jurisdiction and dismissing the action against both defendants for lack of subject matter jurisdiction or, in the alternative, on the grounds that this is not a convenient form in which to bring this action.

This action was brought by Nectarios Koupetoris, a citizen and resident of Greece, to recover damages under the Jones Act (46 U.S.C. § 688) and the General Maritime Law for injuries he allegedly suffered on July 19, 1974 while serving as a seaman aboard the KONKAR INTREPID.

Konkar Intrepid Corp. (hereinafter sometimes referred to as the shipowner) is the owner of the KONKAR INTREPID, a Liberian Flag vessel. The shipowner is an alien corporation organized and existing under the laws of Liberia, and it has its office and

principal place of business at 42 Amalias Avenue, Athens 119, Greece. All outstanding shares of the shipowner are owned by C. Karpidas, Penelope Paraschis, Aliki Perrotis and Ioannis Andropoulos, who are citizens and residents of Greece.

The shipowner is not licensed to do business in New York and is not doing business in New York State. It does not maintain offices in the United States and it has no salesmen in New York or the United States. Konkar Intrepid Corp. does not own or lease any property in the State of New York, and does not solicit any business in the State of New York.

The KONKAR INTREPID is the only vessel owned by Konkar Intrepid Corp. The KONKAR INTREPID never visited New York in 1974, the year of the plaintiff's asserted accident, and it has not visited the State of New York thus far in 1975.

Konkar Maritime New York Agencies, Ltd. is organized and exists under the laws of the State of New York, but discontinued business on December 31, 1974 and is presently winding up its affairs. Its office and principal place of business was formerly located at Suite 1132, 17 Battery Place, New York, New York.

Service of process on the shipowner was assertedly made by delivery of the summons and complaint to Konkar Maritime New York Agencies, Ltd., on or about October 29, 1974. Konkar Maritime New York Agencies, Ltd. is not the shipowner's manager or general agent and is not authorized to accept service of process on its behalf. Prior to its cessation of business on December 31, 1974, Konkar Maritime New York Agencies, Ltd. retained husbanding agents on behalf of several shipowners, including Konkar Intrepid Corp.

It collected and disbursed money for the account of Konkar Intrepid

Corp., but it exercised no discretion in these tasks and it passed the money to the shipowner as soon as possible.

Konkar Maritime New York Agencies, Ltd. did not solicit any business on behalf of the shipowner and it did not at any time, and does not now, own, operate, manage or control the KONKAR INTREPID. The shipowner derives no income from the State of New York

The plaintiff executed his maritime employment agreement in Greece with the shipowner's Greek hiring agent, Konkar Shipping Agencies S.A. (A copy of the plaintiff's maritime employment agreement is annexed as exibit A along with a specimen English translation of the printed portions of the form. A translation of the entire employment agreement signed by the plaintiff will be filed with the court as soon as possible.) Paragraphs 8, 9 and 10 of the plaintiff's employment agreement provide that Greek law applies and that Greek courts of Athens have exclusive juridiction over any and all disputes between the plaintiff and the shipowner.

The crew of the KONKAR INTREPID, including the plaintiff, were hired in Greece by the Konkar Shipping Agencies S.A., the shipowner's Greek agent, or were signed aboard by the Master of the KONKAR INTREPID. The majority of the vessel's crew members. In the time of the plaintiff's alleged accident are Greek citizens, and none of the vessel's crew members are United States citizens or residents. (A copy of the crew list is annexed as exhibit B).

The plaintiff alleges in his complaint that his accident occurred on or about July 19, 1974 while he was employed as a

seaman aboard the KGNKAR INTREPID. The accident assertedly occurred in the navigable waters of the Port of Baltimore, Maryland. The plaintiff was apparently treated for his injuries at the USPHS Hospital in Baltimore, and was subsequently treated by Dr. George Berkett in New Orleans. The plaintiff was apparently also treated by Dr. Kossyfakis and Dr. Kupis in Piraeus, Greece.

WHEREFORE, it is respectfully requested that the court grant an orde missing the complaint against konkar Maritime New York Agencies, Ltd. on the grounds that it did not employ the plaintiff and does not own, operate, manage or control the KONKAR INTREPID and is therefore not a proper party defendant; dismissing the complaint as against Konkar Intrepid Corp. on the grounds of insufficient service of process and lack of personal jurisdiction, and dismissing the action against both defendants for lack of subject matter jurisdiction or, in the alternative, on the grounds that this is not a convenient form in which to bring this action; and for such other, further and different relief as to the court may seem just and proper.

Sotiris D. Tselentis

Sworn to before me this 16 day of July, 1975

Notacy Publicary
Notacy Public, State of New York
No. 41-6490495
Commission Expires March 30, 1976

Motory Public, State of New York
No. 41-6490495
Commission Espais Materi 30, 1978

ZIMBAZIZ NAYTUA ZEQX NAYTIK

	Εν Πειραιεί σήμερον τήν 22αν Φεβρουαρίου, 1974 οι δπογράφοντες κατωτέρω:					
	Η KONKAR SHIPPING AGENCIES S.A., ἐνεργοῦσα ἐν προκειμένω ὡς ἀντιπρόσωπος ἐν Ελλάδι					
της έται	ρίας Κάπολη Ιντρινίο COPP. πλοιοκτητρίας του Δ/ΠΙΏΙΙΑΝ ΠΑΡΕΡΙΟ					
Σημα	ιζα Λιβερίας Νηολογίου Νοπτονία άριθ. 3686 έτους κατασκευής 1971					
Κ.Ο.Χ. 38,847.34 Δ.Δ.Σ. 5 ΜΤΟ ΤΌπος Μηχανής ΕΗΝ (Diesel) ίππ						
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β)	και ο Νεκτάριος Νικολάου ΚΟΥΠΕΤΟΡΗΣ Ιθαγενείας Ελληνικής					
γεννηθε	ίς έν Αθήναις τό έτος 1946 κάτοχος ΝΑΥΤΙΚΟΥ ΘΥΛΛΑΔΙΟΥ					
άριθ.	55853 Α' κάτοικος 'Αθηνῶν όδὸς 'Ερεσύφρονος , Θησεζον.					
1. αὐτῆς 6	13 συμφωνούμεν και ἀποδεχόμεθα τὰ κάτωθι: 'Η ΚΟΝΚΑΚ SHIPPING AGENCIES S.A., ὑπὸ τήν ἀνωτέρω ἰδιότητά της καὶ μὸνον καὶ ἄνευ ἰδίας ὑθύνης προσλαμβάνει τόν ἔτερον τῶν συμβαλλομένων ὅπως ὑπηρετήση εἰς τὸ ἀναφερθέν σκάφος ὡς Μ.Η.Χ.Α.Ν.Ι.Κ.Ο.Σ.Γ! Οπὸ τούς κάτωθι ὅρους καὶ συμφωνίας: Μηνιαΐος μισθὸς Συλ. Συμβάσεως £ 127.24 Μηνιαΐον Δῶρον πλοιοκτητῶν £ 162.76					
	EYNOAON € 290.∞					
4.	'Επίδομα Κυριακών ΙΙ°/ _ο Συμφώνως 'Ελληνική Συλλογική Συμβάσει.					
5.	Ύπερωριανή ἀμοιβή καθ' ὥραν Συμφώνως Ἑλληνική Συλλογική Συμβάσει.					
. 6.	'Η διάρκεια ναυτολογήσεως είναι άορίστου χρόνου.					
. 7.	Ο μισθός ἄρχεται καταβαλλόμενος ἀπό τῆς ναυτολογήσεως τοῦ ναυτικοῦ ἐπί τοῦ πλοίου. ὑπόκειται δὲ εἰς ἀπάσας τὰς γομίμους εἰσφοράς ὑπέρ τοῦ παυτικοῦ Απομαχικοῦ Ταμείου, Ταμείου Προνοίας κλπ. μεθ' ὧν τὸ πλοίου είναι συμβεβλημένον.					
	Κατά τά λοιπά συμφωνείται ότι ή παρούσα σύμβασις διέπεται άποκλειστικώς άπό τόν 'Ελληνι Νόμον, εν συνδυασμῷ πρός τήν επεχουσαν ίσχύν Νόμου Συλλογικήν Σύμβασιν μεταξύ τῆς Ένώσεως 'Ελλήνων Έροπλιστών και τῆς Πανελληνίου Ναυτικῆς 'Ομοσπονδίας διά τὰ ὑπὸ 'Ελληνικήν σημαίαν πλοΐα.					
9.	Έν περιπτώσει ὰσθενείας τοῦ ναυτικοῦ συμφωνεῖται ὅτι ἰσχύει ὁ Ἑλληνικός Νόμος (Κ.Ι.Ν.Δ.) συμφωνεῖται δὲ εἰδικός μισθός κατὰ τήν διάρκειαν τῆς νοσηλείας ὁ προβλεπόμενος ὑπὸ τῆς Ἑλληνικῆς Συλλογικῆς Συμβάσεως τῆς ἐφαρμοζομένης ἐπὶ πλοίων ὑπὸ Ἑλληνικήν σημαΐαν. Ἐν περιπτώσει δὲ ἐργατικοῦ ἀτυχήματος ἐφαρμόζεται ὁ νόμος 551.					

- 10. *Επὶ πλέον συμφωνεῖται ὅτι ἀποκλειστικῶς ἀρμόδια διὰ τὴν λύσιν πάσης ἐκ τῆς παρούσης διαφορᾶς θὰ εἶναι μόνον τὰ ἐν *Λθήναις *Ελληνικὰ Δικαστήρια, κρίνοντα κατὰ τούς *Ελληνικούς Νόμους, ὰ-κοκλειομένης τῆς προσφυγῆς εἰς δικαστήρια οἱασδήποτε ἄλλης χώρας ὡς καὶ τῆς ἐφαρμογῆς οἱουδήποτε ἄλλου πλήν τοῦ 'Ελληνικοῦ Νόμου.
- 11. Έν περιπτώο επαναπατρισμού μου ἀεροπορικῶς ὁ ναθλος διὰ τό βάρος τῶν ἀποσκευῶν πλέον τοῦ ἐπιτρεπομένου παρὰ τῶν ἀεροπορικῶν ἐταιριῶν θὰ είναι διὰ λογαριασμόν μου. Τὸ αὐτὸ ἰσχύει καὶ κατὰ τήν ἐξ Ἑλλὰδος ἀναχώρησιν πρός συνάντησιν τοῦ πλοίου.
- 12. Η παρούσα συνετάγη είς δύο πρωτότυπα καί εκαστος των συμβαλλομένων ελαβεν άνά εν.

OI EYMBAAAOMENOI

O NAYTIKOS

CONKAR (THE CONKAR OF S. A.

FXHIBIT A"

SEAMAN'S EMPLOYML AGREEMENT

In Piraeus, today			the undersigned:			
a	The "KONKAR SHIPPING AGE	NCIES S.A.", acting in it	ts capacity as representative in Greece			
of	<u> </u>	owners of M/	v			
flag	Port of reg	gistry	No Year built			
	Gross Call sign		pe of engine			
b	and		nationality			
born at		on the	holder of			
			No			
do here	the "KONKAR SHIPPING AG	: ENCIES S.A." solely in	its capacity as above and without any			
	tiqui - 1					
2.	Month' wages	•				
3.	Monthly Owners bonus		•			
4.			f			
5.	Overtime remuneration per hour					
6.	The duration of present contract	is agreed to be for				
7.	6 6 1	outions in favour of the G	reek Scaman's Pension Fund (N.A.T.)			
9	As for the rest it is mutually agreed that this contract is governed exclusively by the Greek Law in combination with the Collective Agreement, which has force of Law, between the Greek Shipowner's Union and Panhellenic Seaman's Federation for the ships under Greek flag.					
9.	Private Nautical Code and it is	further agreed that sicknessetive Agreement as applied	at the governing Law will be the Greek ss pay during medical treatment will be ed on vessels under Greek flag. In the			

- 10. Further more it is mutually agreed that any dispute that might arise between the contracting parties will be adjudicated by the Greek Courts of Athens only and in accordance with the Greek Law to the exclusion of any foreign Courts and Law of any other Country which for the purpose of this Agreement have no jurisdiction.
- 11. In case of my repatriation by air the freight for excess baggage above the permissible weight by the Airlines will be for my account. The same applies when the seaman leaves Creece to join the vessel.
- 12. The present has been compiled in duplicate and each of the contracting parties has received one original copy.

THE CONTRACTING PARTIES

THE SEAMAN

FOR

KURKAR SHEETED MITELES S.A.

ermana sa

EXHIBIT 'A'

PORT SEVEN ISLAND

CREW LIST

NO	. NAM	RANK .	AGE	MONTHLY	DATE SIGNED ON	NATIONA	
1.	XIDOUS	Panaciotis	Pactor	41		21.4.74	Grook
2.	KAPANTESAS	Mikolaos	Ch. Etto	35		21.4.74	
3/	SCIMVO3	Parcos	220. "	29		30.5.74	**
4.	PAPADOPOULOS	Solon	3rd. "	22	7		
5.	LIGDON	Tonito	P/0 .	23		20.5.74	
6.	MANAKOS	Georgies	Ch. Eng.	42		201.74	Tadlan
7.	DRIEGIS	KONSTANSIN	2nd. "	29		20.1.74	Grook
8.	TRIPIDAKIS	Georgios	334. "	42		32.3.74	**
9.	KUPETORIS .	Nectarios	3rd. "	28		23.2.74	11
10.	ECHIVOICA	Androna	350.	55			
31.	LOIOS	Goorgion	App. Eng.	24		27.5.74	"
12.	BURATORAS	Goorgion	Electr.	35		28.5.74	**
13.	THOODOPAKIS	Stavros	App.	19		3.7.74	**
35.	GIANAMOURIS ANTONIS	Potros	Bosun	45		20.5.74	n
15.	ULI/OA	Stylianos Rabon	Carpondor	30		27.5.74	n
27.	CVIILITIVA	Omr	A.D.	24		6.0.73	Chillon
10.	GALECUTILAS	Jorgo		23		6.9.73	11
19.	RIHIAS	Athanasios	•	3%		22.4.74	Greek
m.	Enlag	จัดติดูจ	n			23.5.74	Chilloon
122.1	GAMMANDO	Claudio	47	36 37		15.5.4	H
52.	CIALITATI	Elogitherios	n	23		20.5.74	Grack
23.	ALEMINANO	Lolva	0.5.	32		13.5.74	Chillean
25.	SUBURIO C. C. CATVALES	HORSIRA	017.32	50		27.5.74	n
25.	PURTICIEIVIC	PU1/20	n n	37		20.2.74	n
1		Danko	Vipor	25		13.5.77	17
27.	BOTIATOS	Apostolos	п	26		23.5.74	Crock
1:3.1	V 57.11	Stamptica	Stoward	63		27.5.74	n
23.	KOMATS ZS	Miliolaca	Ch. Cook	34		27.5.74	n
30.	O. IVADES	nana	Ass. Stu.	33		13.5.75	Cittaoa
31.	INTAILS	Hichail	Λεο. "	30		27.5.77	Crook
22.	ralation	Labres	Λαα. "	17		20.5.74	' "
33.	TOTAS	Charalaption	App. "	16		4.2.24	Ħ
37.	Instropanagiotis	Echlifos	Acu. Cook	26		20.1.74	**
35.1	ECTVACC	Anega	Sur/ry	29		3.7.74	
36.	IURATORAS	DINitroula	n	31			
	EX	HIBIT	B -18a-	51		6.7.74	

AFFIDAVIT OF HERBERT LEBOVICI READ IN OPPOSITION TO MOTION.

STATE OF NEW YORK) ss.:

That I am a member of the firm of Lebovici & Safir, attorneys for the plaintiff herein, and personally familiar with the matters herein stated.

for personal injury sustained by him on July 19, 1974 while working aboard a Liberian flag vessel called the Konkar Intrepid. On that date, while the vessel was in Baltimore, and while the plaintiff was working on an apparatus described as a Lube Oil Cooler, the heavy metal door or cover of the said apparatus closed on the plaintiff's hand causing severe injuries.

The emplaint alleges claims pursuant to the Jones Act, alleging substantial contacts of the transaction with the United states pursuant to the law stated in Hellenic Lines Ltd. v. Rhoditis, 398 U.S. 306 and Bartholomew v. Universe Tankships Inc., 263 F.2d 437, and alternatively seeks damages for the unseaworthiness of the vessel pursuant to the Liberian law whose flag the vessel flew.

As appears from the Marshal's return of service in the file of the court, and as it is admitted by the moving affidavit, service was effected on October 29, 1974. Service was effected on

the alleged shipowner KONKAR INTREPID CORP., a Liberian corporation, by delivery to its managing agent, Konkar Maritime New York Agencies Ltd. KONKAR MARITIME NEW YORK AGENCIES LTD., a New York corporation is also joined as a defendant in this case, and service was effected upon it at the same time as service on KONKAR INTREPID CORP.

As this court will recall, it was the claim of this plaintiff that this case was actually settled in conference between plaintiff's counsel and an officer of Lamorte, Burns & Co., Inc., as agent for the defendants herein; an application to enter judgment pursuant to such settlement was denied by this court on July 7, 1975. It is relevant if not dispositive, that in March, Mr. T.N. Junis confirmed to an associate of your deponent that the case was in fact settled, and that the check was being awaited. Furthermore, on April 18, 1975 your deponent met with Mr. Junis to discuss the possible adjustment of several cases. At that time he stated there was no occasion to discuss the settlement of this case because this case had in fact been settled, and the check was being awaited.

On July 2, 1975 subsequently to the service of a Notice of Motion for the entry of judgment returnable on July 7th, we received from defendants' counsel a Notice of Appearance in the

action, a copy of which is attached hereto and marked Exhibit 1.

on July 7th, Judge Pollack, denied the application for the entry of judgment but set the case down for trial on September 2nd of this year. Plaintiff's motion having been denied by the court, plaintiff on July 7th served a notice of deposition on the defendant KONKAR MARITIME NEW YORK AGENCIES, LTD. A copy of this notice returnable on the 24th of July is attached hereto as Exhibit 2 of this affidavit.

On the argument before Judge Pollack, counsel for defendants stated that an answer would be filed by the end of the week. No answer has as yet been filed.

It is now claimed by the defendants:

- 1. That the defendant KONKAR INTREPID CORP. was not served by delivery of process to KONKAR MARITIME NEW YORK AGENCIES,
- 2. Generally judgment should be granted in favor of KONKAR TOTTIME NEW YORK AGENCIES, LTD. on the alleged ground that it was a laintiff's employer, and can therefore not be held liable to limitff.

Some of which it has already embarked upon.

With respect to the defendants' allegation that KONKAR
MARITIME NEW YORK AGENCIES, LTD. is not the shipowner's manager or
general agent, this is a conclusory allegation without evidenciary
aupport such as to give it any viability whatsoever. Even so, the
moving affidavit is forced to admit that KONKAR MARITIME NEW YORK
AGENCIES, LTD. appointed agents for the vessel in several ports,
and that it both collected and disbursed money for the account of
KONKAR INTREPID CORP. Prima facie at least, these are indications
of purposeful activity on behalf of the defendant KONKAR INTREPID
such as to indicate that it has in fact been served. What KONKAR
MARITIME actually did for it, is of course relevant and material
to the question, and this will be in part the subject of the Notice
of Examination of the defendant KONKAR MARITIME on the deposition
already noticed.

that KONKAR MARITIME was not the "employer" of plaintiff, this too in any event raises a question of fact. The moving affidavit does not even claim that the plaintiff was not hired by an agent of KONKAR MARITIME. The statement that the plaintiff was hired in creece by still another comporation, KONKAR SHIPPING AGENCIES S.A. or was signed abound by the master, is an indication that the affiant is not stating how the plaintiff was engaged. In Cosmopo-

litan Shipping Co. v. Mc Allister, the Supreme Court of the United States stated (337 U.S. 795) that the solution of the problem of determining who is the seaman's employer depends not on the use of such word as employer, agent, independent contractor, etc. but rather upon the determination of "whose enterprise the operation of the vessel was". Whose orders controlled the master and the crew? Whose money paid their wages? Who hired the crew? Whose initiative and judgment shows the routes and the ports? With respect to these questions, concerning which issue has been tendered in the complaint, there is no evidence by the defendants or the movement affidavit. These subjects will probably be the subject of the examination before trial.

Still further is to be noted that the complaint contains an alternative cause of action pursuant to the Liberian law, which expressly incorporates the General Maritime Law of the United States and by such incorporation the doctrine of unseaworthiness.

whereas, the cause of action pursuant to the Jones Act expressly requires a determination as towho is the plaintiff's 'employer', under the General Maritime Law, an injured party is not quite so limited. Anyone who participates in the creation of an unseaworthy condition directly or through its employees may be held liable to the seaman.

The defendants claim, that there can be no liability either under the Jones Act or the Liberian law, by reason of an alleged provision in the employment contract providing for the application of oreek law and determination by Greek courts. Such provisions have time and again been held to be illegal for the purpose of preventing the application of the Jones Act (Voyiatzis v. National Chipping and Trading Corp., (S.D.N.Y.) 199 F.Supp. 920, 924; Pavlou v. Ocean Traders Marine Corporation, 211 F. Supp. 320, 322; Krenger v. Pennsylvania R. Co., 174 F.2d 556, 559, 561; Blanco v. Phoenix Compania de Navigacion, 304 F.2d 13; Southern Cross S.S. Co. v. Edipts, 265 F.2d 651 and many others). And similarly for the prevention of the applicability of the Liberian law, with respect to the contention that the contract provides for the application of Greek law, the case of Tsaoyssidis v. M/v Mar Star is directly in point stating (372 F.Supp 74, 76)

in Greece between the seaman and itself prohibits any other law but the law of Greece. Section 320 of the Liberian Maritime Code provides that shipping articles are required and the regulations promulgated under said Statute provide for a specific form for shipping articles under Liberian law. (Regulation No. 10-320). Said statute, regulations and specific articles prohibit any foreign law or regulation to govern the employment of a seaman aboard a liberian vessel other than that of the Republic of Liberia."

See also Retzekas v. Vygla Steamship Co., S.A., 193 F. Supp. 259, 250.

Finally, with respect to the defendants' application to decline jurisdiction on the basis of forum non conveniens it is respectfully submitted that by reason of the lateness of the application and the circumstances under which it is made, it would be peculiarly unjust to entertain such an application. Furthermore insofar as the complaint states claims under the Jones Act, jurisdiction in not declinable on the ground of forum non conveniens. Bartholonew v. Universe Tankships Inc. 263 F.2d 437, 443; O'Donell v. 1191n, Joliet & Eastern Ly. Co., 193 F.2d 348, 353 and ma. others. Granting that under circumstances not here present it could be appropriate to consider an application to decline jurisdiction with respect to the claim under the Liberian law, it is respectfully submitted that all that was said by Judge Goodrich and adopted in the case of Retzekas v. Vygla Steamship Co. S.A. 193 F. Supp. 259, 261, is here appropriate. Furthermore since jurisdiction must be retained with respect to the Jones Act claim, it is appropriate that it should be retained with respect to the Liberian ine claim in order that a disposition of all claims may be had in re action against all defendants.

It is respectfully submitted that the defendants motion should be denied in all respects.

. Worm to before me this lith cay of Joly, 1975.

Herbert Lebovici

Notary Public, State at Now .
No. 31-8737750
Quelified in New York County
Commission Expires March 30, 1976

STATE OF NEW YORK) ss.:

HERBERT LEBOVICI, being duly sworn, deposes and says:

That this affidavit is submitted by your deponent subsequent to the taking of the deposition on Wednesday, July 22, 1975 as permitted by the court in our appearance before it on July 21, 1975. As appears from our letter to the court of July 23, 1975, a copy of which is attached to this affidavit as Embibit A, several critical documents in the possession of the witness, and identified during the course of the deposition, had been requested to be produced by the witness KONKAR MARITIME NEW YORK AGENCIES, LTD., and at this writing on July 24, 1975 have not been produced and counsel for the defendant states that he cannot tell us whether they will be produced on Friday.

Two documents in question are respectively an eightyear charter party stated to be presently in effect and to have
been in effect during the whole year of 1974, the year in which the
plaintiff's accident occurred and in which service was claimed to
have been effected on the defendant KONKAR INTREPID COL

Likewise, unproduced at this writing are monthly statements or accounts rendered by KONKAR MARITIME NEW YORK AGENCIES, LTD. to KONKAR INTREPID CORP., which statements for the year 1974 were

demanded to be produced and were identified as being in the possession of the itness, KUNKAR MARITIME NEW YORK AGENCIES, LTD.

Monday, July 21st, service on the defendant KONKAR INTREPID CORP.

was effected by service on KONKAR MARITIME NEW YORK AGENCIES, LTD., the receipt of which service by KONKAR MARITIME NEW YORK AGENCIES, LTD. was admitted. It was claimed by the defendants that since KONKAR INTRECID CORP. had no corporeal presence in the State of New York herrice could not be effected by service on KONKAR MARITIME NEW YORK ACENCIES, LTD. Merely to set the stage for the plaintiff's contention that the activities of an agent in a junisdiction escate a sufficient "presence" of a foreign corporation to subject the foreign corporation to be included in the court by service on the agent, we cite the oblining decisions of the feecond Circuit.

In French v. Gibbs Corporation, 159 F.2d 787, Judge Learned Hand stated at page 789:

"...; but continuous activities be they as little as one will, satisfy the necessity of that physical 'presence' on which jurisdiction depends in a jurisprudence, territorially limited."

In Graumenos v. Lemos, 457 F.2d 1067, the Court of Appeals stated at page 1072:

"Rule 4(d) (3) permits personal service on a domestic or foreign corporation through service on on a of its officers, a managing or general agent, or any agent authorized by appointment or by law to receive service of process. In order for the corporation to be amenable to service in a state, it must have minimal contacts with the state, sufficient to warrant subjecting it to suit there without offending due process standards. See McGee v. International Life Insurance, 355 U.S. 220, 78 S. Ct. 199, 2 L.Ed.2d 223 (1957); International Shoe Co. v. State of Washington, 326 U.S. 310, 66 S. Ct. 154, 90 L.Ed. 95 (1945). This must be more than an incidental contact with the state, although the party does not have to be authorized to do business in the state or have offices there. If the action of an agent of the party in the state is substantial, that will justify service on the defendant in that jurisdiction. See Arpad Szabo v. Smedvig Tankrederi A.S., 95 F. Supp. 519, 522 (S.D.N.Y. 1951). If a defendant is found to have sufficient contacts to justify wrisdiction, complete and adequate personal service in compliance with the rules stated above must also be accomplished. It has been held that normally, the person in charge of the activities in the state which are the basis for the conclusion that the defendant is present in the managing agent for purposes of service. See Bomze v. Nardis Sportswear, 165 F.2d 33 (2d Cir. 1948)." (Emphasis added.)

In Bomze v. Nardis Sportswear, 165 F.2d 33, the Court of Appeals in a decision which has later been quoted with approval supra, stated:

"...; for we understand the New York courts to hold that, whatever activities make the corporation 'present' the agent in charge of those activities is the 'managing agent pro hac vice'."

In an opinion by Judge Weinfeld repeatedly cited by the higher courts of this and other circuits, Szabo v. Smedvig Tankre-

deri A.S., 95 F. Supp. 519, 521, wherein less was proven than we are about to show, but which had similar elements to the proof present herein, it was stated:

"Had the defendant been physically present either through its officers what more could it have done in the promotion of its interests in the operation and "maintenance of the vessel except to retain directly the proceeds of the transaction."

Mr. Tselentis testified, without indicating any specific expenditure, that the Piraeus agent for the vessel one Konkar Shipping Agency, S.A. may have made some expenditure; on behalf of the vessel in addition to those made by KONKAR MARITIME NEW YORK AGENCIES, LTD. Conceding for the purpose of argument that such may indeed been the fact, it further remains a fact that any monies expended by KONKAR SHIPPING AGENCY S.A., the Piraeus agent, would have been monies that would have been collected in the first instance by KONKAR MARITIME NEW YORK AGENCIES, LTD. here in New York by way of charter hire and thereafter remitted by it either to the owning KONKAR INTREPID CORP. or the agent KONKAR SHIPPING AGENCY, S.A.

It is respectfully submitted that the proof hereinafter to be set forth shows that not only was the activity of KONKAR MARITIME NEW VOCK ACENCIES, LTD. on behalf of FONYAR INTREPID CORP. in this jurisdiction regular and continuous as required by

French v. Gibbs, supra and Bomze v. Nardic, supra, but, as indicated in Szabo v. Smedvig, etc. had the defendant KONKAR INTREFID CORF. been physically present in New York, it could not have done more in the promotion of its interests in the operation and maintenance of the vessel the KONKAR INTREFID than was already done for it by KONKAR MARITIME NEW YORK AGENCIES LTD. Significantly there is not a single item of hard proof in the record as distinguished from mild conclusions, indicating any business done by KONKAR INTREPID CORP. anywhere else.

Exhibits B and C vhereof respectively are the extract and title page of the Greek Shipping Directory for 1975 and the Greek Shipping Directory for 1975 and the Greek Shippwners Register for 1974. Mr. Sotiris Tselentis who testified on behalf of KONKAR MARITIME NEW YORK AGENCIES LTD. at the deposition, stated that he was Vice-President of KONKAR MARITIME NEW YORK AGENCIES LTD. and that the information provided in Exhibit B, for the year 1975, was also accurate for the year 1974, and Exhibit C of the year 1974 was also accurate for the year 1975.

Mr. Tselentis further testified that KONKAR MARITIME

NEW YORK AGENCIES LTD. as agent for KONKAR INTREPID CORP., paid out

from an account maintained at the Chase Manhattan Bank at 25 Broadway all the owners expenses of operating the vessel that it was

called upon to pay during the year of 1974; that KONKAR MARITIME

NEW YORK AGENCIES LID. accounted monthly to its principal KONKAR
INTREPID COPP., indicating in the account all funds received by
it during the month and all sums expended by it during the month.

Mr. Tselentis further testified that in addition to the KONKAR INTREPID CORP. account at the Chare F mhattan Bank at 25 Eroadway, with respect to which several employees of KONKAR MARITIM. NEW YORK AGENCIES LTD. were signatories including himself, that there was another account at the same Chase Manhattan Bank colled the Konkar Victory Corp. account; that this account, the Victory account, was a cash collateral account into which there was paid the monthly charter hire earned by the KONKAR INTREPID of the KONKAR INTREPID CORP. He further testified that automatically, the KONKAR INTREPID Charter hires so post into the Konkar Victory account were automatically credited to the Konkar Intrepid account, and thus, KONKAR MARITIME NEW YORK AGENCIES LTD. was able to draw on the Konkar Intrepid account such sums as were necessary to be expended on behalf of the owner with respect to the Konkar Intrepid.

Mr. Tselentic further testified that the charter party
which provided the funds that initially went into the Konkar
Victory account and from there into the Konkar Intrepid account
were paid monthly pursuant to an eight-year time charter. Mr.
Tselentis was not sure when the vessel first entered upon the
performance of that charter party, indicating that it was probably

whole year of 1974, the charter hires were so received into the Konkar Victory and then the Konkar Intrepid account, and the said income and disbursements accounted for monthly to Konkar Intrepid Corp. by KONKAR MARITIME NEW YORK AGENCIES, LTD.

With respect to what services for the vessel or business was done for the defendant corporation, Mr. Tselentis testified that from the Konkar Intrepld account they put the master in funds from time to time for use by him in the operation of the vessel; that from such funds he paid the crew, from time to time. Other expenses paid for by Konkar Maritime New York Agencies 1.td. from the Konkar Intrepid account were payment for food consummed aboard the vessel, and supplies used aboard the vessel; in short KONKAR MARITIME NEW YORK AGENCIES LTD. could be called upon and was called upon to pay almost any expense that was the Awner's obligation under the charter party. Mr. Tselentis was careful to point out that under the terms of this particular charter party expenses such as bunker fuel, the cost of loading and discharging the vessel in port, and port expenses connected with the loading and discharging of the cargo were expenses incurred for the charterer's account rather than for the owner's account, so that these monies were not paid out by the owner at all, but rather by the charterer for its own account.

Even so, on occasion, the charterer might advance payment

charterer and in such event the charter hire when paid into the Konkar Victory account at the Chase Manhattan Bank, would be smaller by the amount of the payment made by the charterer for the owners account.

Thus, while the moving affidavit guardedly admits at page 2 that KONKAR MARITIME NEW YORK AGENCIES LTD. "collected and disbursed money for the account of Konkar Intrepid Corp.", it collected all of the charter hirer of the vessel, the very raison d'etre for the existence of the vessel, and from this charter hire it distributed, and Mr. Tselentis expressly so testicied, payments that had to be made as the owner's obligation, payment to itself for its services in the matter, and finally remitted from time to time to KONKAR INTREPID CORP. the balance remaining after the previous disbursements indicated. As in Szabo, after so doing, there was nothing left to do. This was the whole business of the corporation. Not only was this the whole business of the corporation, but, as required by French v. Gibbs and Bomze v. Nardis, this business done for it in the City of New York was regular and continuous and obviously had to be substantial.

Under the cases cited above, this activity on behalf of KONKAR INTREPID CORP. by KONKAR MARITIME NEW YORK AGENCIES LTD. in the City of New York, was more than sufficient to qualify KONKAR MARITIME NEW YORK AGENCIES LTD. as a managing agent so as to make

Bowever, this was not by any means the end of KONKAR MARITIME

NEW YORK AGENCIES LTD. activity on behalf of KONKAR INTREPID CORP.

On the deposition Mr. Tselentis was asked the direct question as to whether or not the KONKAR INTREPID was the subject His answer was "no". of any mortgage. As appears from the pleadings, the vessel here was a Liberian flag vessel, and as a result mortgages on the vessel are recorded with the Liberian Deputy Commissioner for Maritime Affairs of the Republic of Liberia located at 203 Park Avenue, For York. Investigation at the office of the Deputy Commissioner shows, and your deponent inspected the mortgage in particular, that on January 20, 1971 KONKAR INTREPID CORP. executed a first preferred mortgage on the vessel to secure a debt of \$3,000,000. The mortgage was payable in installments, and these installments are payable at the Missel lank at the Chase Manhatten along in the Borough of Manhatten. City and State of New York.

The records of the Deputy Commissioner of Maritime Affairs for the Republic of Liberia show that this mortgage is still open and unsatisfied.

Not only was the mortgage executed in the City of New York as appears from the mortgage itself, but, the mortgage was signed on behalf of KONKAR INTREPID CORP. by one Nikolaos Lyritzia. Reference to Exhibit B annexed hereto will show that the said

Nikolaos Lyritzis who signed the mortgage for KONKAR INTPEPID CORP.
is one of the officers of KONKAR MARITIME NEW YORK AGENCIES LTD.,
in fact. its director.

Likewise open and unsatisfied is a Second Preferred

Mortgage on the KONKAR INTREPID executed in the City of New York

on the 22nd day of July, 1971, to secure the re-payment of a Letter

of Credit secured on an "Application for Clean Sight Credit

Application and Agreement". The amount of the obligation was

\$1,384,762.50 to be repaid in installments.

This "Clean Sight Credit Application and Agreement" was signed in the following fashion:

Konkar Intrepid Corp.
N. Lyritzis
17 Battery Pl.
New York, N.Y.

Thus, indicating that the corporation had even adopted the address at 17 Battery Place as its own.

This second preferred mortgage at page 8 thereof, contains the following significant representation on the part of the ship-owner, known that the following significant representation on the part of the ship-

"The ship wher lawfully owns and in lawfully possessed of the Vessel free from any lien, charter or encumbrance whats ever except for (i) the first mortgage, (ii) that certain charter party dated September 22, 1969 as anonded, between the shipowher (acting through its each Konkar Maritime New York Agencies Ltd.) and Kowasaki Steel Corporation, as charterer and that certain master agreement dated September 22, 1969 between the same parties, relating to said charter party which charter party and master

agreement together constitute a consecutive voyage charter party covering the vessel [Emphasis added]

Again on the deposition, when Mr. Tselentis testified that the vessel was the subject of an eight year charter party, he testified that the charterer was CATX Oswego Shipping Company. This testimony would seem to be at odds with the express provisions of the second preferred mortgage just quoted, which names Kawas ki Steel as the charterer of the vessel. Be that as it may, the significant matter is that the mortgage identified KONKAR MARITIME NEW YORK AGENCIES LTD. as the shipowner's agent in New York. It is entirely possible that GATX Oswego may now be the charterer of the same vessel by assignment of the Kawasaki charter or possibly through the execution of a later charter. Mr. Tselentis testified that he was not employed at KONKAR MARITIME NEW YORK AGENCIES LTD. at the time that this original eight year charter was executed.

As appears from Exhibit B herewith and/was reinforced by the testimony of Mr. Tselentis, during 1974 there were five Konkar ressels, each Amed by a separate corporation, but, according to the testimony of Mr. Tselentis on his deposition, all of the said corporations wereowned by the same principals. In his moving affidavit Mr. Tselentis states that

Thrin to its cossation of business on December 31, 1976 Combar Maritime Most York Monneies Ltd. retained bushanding agents on behalf of several shipowners, including Fortan Inches Maritime (Emphasis added)

The occasions on which this occurred are not specified in the affidavit and to. Tablentis was unable to remarker which they were on his deposition.

the fact that KONKAR MARITIME NEW YORK AGENCIES LTD. had the power to appoint husbanding agents in ports outside the port of New York, is by itself a significant indication of business power. Mr. Tselentis testified on his deposition that on such occasions when this occurred, the husbanding agent so appointed would present its account to KONKAR MARITIME NEW YORK AGENCIES LTD. who would pay it if it was in order from the Konkar Intrepid Corpaccount with the Chase Manhattan Bank, and in turn would ultimately account to the owner in the monthly account for any payment so made.

On the deposition plaintiff's counsel demanded the production of any agency agreements or correspondence appointing KONKAR MARITIME NEW YORK AGENCIES LTD. to be the agent in New York, the eight year charter party which Mr. Tselentis testified with respect to, and the monthly accounts rendered by KONKAR MARITIME NEW YORK AGENCIES LTD. to KONKAR INTREPID CORP. during the year 1974. Your deponent checked with counsel for the defendant on Thursday requesting these documents again and was told by Mr. Geraghty that he had not secured the documents on Thursday but that he would call me in the morning on Friday, July 25th.

These decrements if secured by the court in connection with this afflic wit and this motion would count and not refer the proof offered berein in this affidavit. (I is did not, then the plaintiff would have to hear the consequences of each discrepancy. The fact that these documentary proofs of what has been said heretofore, all of which could have been produced and were not, were not produced to the deeped by the court as evidence that if produced they would have weighed against the defendant who failed to produce them.

WHEREFORE, your deponent respectfully requests the denial of the instant motion as against the defendant KONKAR INTREPID CORP. It has been served.

With respect to the defendant KONDAR MATTRIE NEW YORK
AGENCIES LTD., plaintiff will consent to the withdrawal of the
corporation as a party defendant even though, service upon it is
effective to bring the other defendant KONKAR INTREPID CORP. into
the action.

Sworn to before me 'this 25th day of July, 1975.

Herbert La .vic.

Herbert Lebovici

July 23, 1975 Hon. Milton Pollack United States District Court Foley Square New York, N.Y. Koupetoris v. Konkar Intrepid Corp., at ano - 74 Civ. 4684 Dear Judge Pollack:-. . 4 With respect to the motion in the above entitled matter which was before your Honor on Monday, July 21st on short notice, and with respect to which you stated that you hoped to determine the matter by the end of the current week, we would advise you as follows. The witness whose deposition had previously been noticed was first provided to us as plaintiff's counsel this morning at 11:00 o'clock. The deposition was taken, and, except for the provision of important documents agreed to be but not yet provided, was completed. The reporter: who wask the deposition, Doyle Reporting Service, Inc., states that it will not have the transcript ready for us prior to Thursday, July 29th. We will not have the written transcript therefor nor the documents to refer to prior to that time. In keeping with our own desire to expedite matters to the full extent possible, we will file a further affidavit EXHIBIT A -39aHon. Milton Pollack
Page 2
July 23, 1975

in opposition on France metters in the

in opposition on Friday, July 25th in which we will state those matters in the deposition that we consider relevant and important. We will further file the transcript of the deposition when we receive it.

We respectfully trust that under the circumstances this will accord with your Honor's wishes in the matter.

Very truly yours, LEBOVICI & SAFIP

By:______ Herbert Lebovici

HL/am

cc: Kirlin, Campbell & Keating, Esqs.
Attention: John Geraghty, Esq.

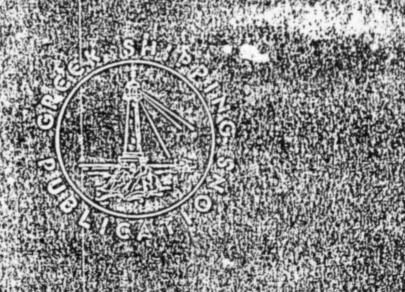


EXHIBIT B

NEW YORK SHIL IN OFFICES AND THE VESSELS -. II REPRESENT NAYTIKA TPAGEIA NEAL . PKHE KAI TA YII AYTON IIPAKTO. LYOMENA IIAOIA

KALMIBES MANAGEMENT INC.

29, Broadway, New York, N. Y. 10006, Tel: (212)269.4844, Cobles: "ASTRONOR", Telex: 232.335

PIRAEUS AGENTS: Mycoli Maritime Corp. S. A., Tel: 452.7318 Interorient Ship. Co.Ltd., Tel: 452.0204 LONDON AGENTS: Triton Ship. Enterprises Ltd., Tel: 480.7450

Vessel's Name

Shipowning Company

Westel's Nome

Shipowning Company

AGIOS ANDREAS AGIOS FANOURIOS CHRYSOVALANDOU

Andrevirgin Comp. Nav. S. A. Pan. Protoklitos Comp. Nav. S. A. Pan.

FILADELFOS GIGI

Filadelfos Comp. de Nav. S. A. Pan. Tourus Ship. Enterprises

DYO CHRYGOVALANDOU

Santiren Ship. Ltd. Nicosia

ZIPOUNAS

Astronorteno Comp. Nav. S. A. Pan.

TRIA San Constantain Mar. Ltd. Nicosia

KARAVIAS (U.S.A.) INC.

1712 Avenue of the Americas, Suite 2304, New York, N.Y.10036, Tel: 245.3820/1, Cobles: "KARAVIAS", Telex: .'24.703 Director: Cat. A.E. Karavias

PIRAEUS AGENTS: Koravias Em. Ltd., Tel: 423.909 LONDON AGENTS: Karavias (London)Ltd., Tel: 638.8521/4

Vessel's Name	Shipowning Company	Vessel's Name	Shipowning Company
ST. ANNA ST. ASIMI ST. DEMETRIUS ST. EIRENE ST. EMMANUEL ST. FOTINI ST. GE. II ST. GRIP SA	Saint Anna Maritime Co. Ltd. Monr. Saint Asimi Maritime Co. Ltd. Monr. Asimi Maritime Ld. Monr. Eirene Maritime Ld. Monr. Saint Emmanue Marit. Co. Ltd. Monr. Saint Eirene Marit. Co. Ltd. Monr. Saint George Marit. Co. Ltd. Monr. Saint Nicholas Marit. Co. Ltd. Monr. Yeo Ship. Co. Ltd. Monr.	ST. MARIA ST. MICHAEL ST. NICHOLAS II ST. PREVIDENCE ST. THOMAS TARSEUS III TASSOS V SOUTHERNER	Saint Maria Marit, Co. Ltd. Monr. Thira Marit, Co. Ltd. Monr. Saint Grigórousa Marit, Co. Ltd. Monr. Saint Michael Marit, Co. Ltd. Monr. Saint Thomas Marit, Co. Ltd. Monr. Saint Spyridon Marit, Co. Ltd. Monr. Saint Anastasios Marit, Co. Ltd. Monr. Southern Metal Ltd. Monr.

KAVOUNIDES HELLENIC CRUISES INC.

521, 5th Avenue, New York, N.Y.10017, Tel: 972.9480/2, Cobles: "KAVOLINES", Telex: 420.298 Director: G. Birbilis

PIRAEUS AGENTS: Kavounides Ship. Co. Ltd., Tel: 452.2011 LONDON AGENTS: Kavounides (London)Ltd., Tel: 437.2175

Vessel's Name	Shipowning Company	Vessel's Name	Shipowning Company
ADONIS	Kavounides Ship. Co. Ltd. Pir.	KENTAVROS	Kavaunides Ship, Co. Ltd. Pir,
EKATERINI	Kavounides Ship. Co. Ltd. Pir.	ORION	Hellenic Cruises S. A. Pir,
ESPEROS	Kavounides Ship. Co. L.J. Pir.	POLICOS	Kavaunides Ship, Co. Ltd. Pir,
GALAXIAS	Hellenic Cruises S. A. Monr.	SIRIUS	Hellenic Cruises S. A. Pir,

KONKAR MARITIME NEW YORK AGENCIES LIMITED

17, Battery Place, New York, N.Y.10004, Tel: 425.6960, Cables: "CONLYRIS", Telex: 117423.102 Director: N. Lyritzis

PIRAEUS AGENTS: Konkar Ship. Agency S.A., Tel: 451.1042

Vessel's Name Shipowning Company

Vessel's Name

Shipowning Company

KONKAR INDOMITABLE KONKAR INTREPID KONKAR PIONEER

Konkar Indomitable Cosp. Monr. Konkar Intrepid Corp. Monr. Konkar Maritime Enterp. S. A. Pan. KONKAR RESOLUTE Konkar Resolute Corp. Monr. KONKAR

THEODOROS Under Construction

KONKAR VICTORY Konkar Victory Corp. Monr.



HELLENIC INSURANCE CLUB

GEORGE VRAHATIS L.T.D.

81, SACHTOURI STR., (VRAHATIS BLDG) PIRAEUS. TEL: 4529.511-15 TELEX: 21 2878 GINA GR



GREEK SHIPOWNERS REGISTER 1970

EXHIBIT C

SHIPOWNING COMPANIES

KINI COMPANIA NAVIERA S. A. PANAMA Kini 25409 Firaeus Agents: Kronos Maritime Agency 3,11 Merarchias Str., # 411.3441/3 = 21.2978 N.York Agents: Transocean Steamship Agency Inc. 29, Broadway N.Y. 10006 # 425.0525 = 233050 KINSDALE PANAMA S. A. PANAMA
Olympic Peace 15688
Piraeus Agents: Springfield Shipping Co. Panama S. A.
Il Merarchias & 25, Ag. Spyridanos Str., # 420.276 21 2317 London Agents: Olympic Maritime Agency (London) Ltd.
141, New Bond Str., WIY Off B. # 473.7262 # 8971
N. York Agents: Central American Steamship Agency Inc.
888 7th Avenue # 489.0900, 224183
M. Carlo Agents: Olympic Maritime S. A.
17, Avenue D'Ostende # 305.841 # 46923 KIRA COMPANIA NAVIERA S. A. PANAMA Arpa 3972 Athens Agents: Arapco Comp. Nav. S. A Kifissou & Athinon Strs, # 571.2180 KISSAVOS SHIPPING CO, S. A. PANAMA
Agathon 19008

Piraeus Agents: Pyrsos Shipping Co. Ltd.
1/3, Fileflinon Str., æ 452.3094/7
London Agents: Fairos Shipping Co. Ltd.
Upper Str., Martin's Lone W. C. 2 æ 836.8613
Agents: Algofaros Maritime Inc.
19, Rector Str., N. Y. 10006 æ 943.0850
223026 KITHERON SHIPPING CO. S. A. PANAMA HERON SHIPPING CO., S. A., PANAMA
Astir, 13635

Piraeus: Agents: Pyrsos Shipping Co., Ltd.
1, 3, Filellinon Str., \$\pi\$: 452, 3074/7 \(\nu\) 21, 2249

London: Agents: Faros Shipping Co., Ltd.
Upper Str., Martin's Lane, W., C., 2\(\pi\): 836, 8613/9 \(\nu\): 25469

N., York: Agents: Algofaros Maritime Inc.
19, Rector Str., N., Y., 10006 \(\pi\): 943, 0850 \(\nu\): 223026 KITION COMPANIA NAVIERA S. A. PANIAMA Toulla 5882 Piraeus Agents: Alassia Steamship Ca. Ltd.
11, Akti. Miaouli = 417.50%6, 21.2519

abndon Agents: Alassia Steamship Co. Ltd.
6, Lloyd's Avenue E. C. 3 = 481.1045 + 885191 KITSA SHIPPING CO. LTD. NICOSIA SA SHIPPING CO. LID. HIS SUBJECT Street

Kiha S. 5854

Piraeus Agents: Elpisaga Comp. Nav. S. A.

9, Filellinon Str. # 452, 4773 - 21, 2108

London Agents: Pateras Agelakos Ltd.

95, White Chappel High Str, El 7RA # 247, 9025 884249 KLADIAS MATHIOS CHIOS Aigaion 324
Piraeus Agents: Mouzakis Constantinos
Karaiskakis Square # 417,5254 KLAVDIA COMPANIA NAVIERA S. A. PANAMA Klavdia 9854 Athens Agents: Franco Shipping Co.
65, Partission Str., # 824.501 ± 21.5219

London Agents: Purvis Shipping Co. Ltd.
41/43, Mincing Lane EC3 # 626.8961 # 887115 KLITSINARIS JOHN VOLOS
Anthoula 282 Piraeus Agents Gerodimos Stratos 5, Bouboulinas Str. # 417.0173

KOMAR GENERAL ENTERPRISES S. A. PANAMA
Kaliopi Yemelos 9074
Piraeus Agents: Yemelos Brothers General Enterprises S. A.
9,11 Merarchias Str. # 417, 4219 , 21,2716
London Agents: Chros Novigation Co. Ltd.
116, Fenchurch Str. E. C. 3 # 709, 9632 , 885759

KONDYLIS EMM, A. PIRAEUS
Alexis K. 488
Piraeus Agents: Gerodimos Stratos
5, Boubaulinas Str. # 417, 0173

KONIDARIS-KATOPODIS & CO. PIRAEUS
Saula K. 495
Piraeus Agents: Siavrou A, Dionissios O. E.
21, Ag. Spyridonos Str. # 417, 5416 , 21, 2715

KONIDARIS G. -SOUKAS N. PIRAEUS
Theodoros 454
Piraeus Agents: Standard Marine (Helias) Ltd.
24, Akti Posseidonos # 421, 945

KONIDARIS JOHN PALMOS DEMETRIOS PIRAEUS
Anastosia K. 500
Piraeus Agents: Palcomar S. A.
21/23, D. Gaunari Str. # 427, 182

KONKAR INDOMITABLE CORPORATION MONROVIA
Konkar Indomitable 39219
Piraeus Agents: Konkar Shipping Agency S. A.
1, Skouze Str. # 451, 1042, 21, 2082
N, York Agents: Konkar Maritime New York Agencies Ltd.
17, Battery Place, N, Y. 10004 # 425,6960, 423102

KONKAR INTREPID CORPORATION MONROVIA
Konkar Intrepid 38847
Piraeus Agenti: Konkar Shipping Agency S. A.
1, Skouze Str., 20 451.1042 2.21.2082
N. York Agenti: Konkar Maritime New York Agencies Ltd.
17, Battery Place N. Y. 10004 2.425.6960 423102

KONKAR MARITIME ENTERPRISES S. A. PANAMA
Konkar Pianneer 23258
Piraeus Agents: Konkar Shipping Agency S. A.
1, Skouze Str., # 451:1042 - 21.2082
N. Yark Agents: Konkar Maritime New York Agencies Ltd.
17, Battery Place N. Y. 10004 # 425.6960 - 423102
KONKAR RESOLUTE CORPORATION MONROVIA

KONKAR RESOLUTE CORPORATION MONROVIA
Konkar Resolute 25139

Piraeus Agents: Konkar Shipping Agency 5, A.
1, Skouze Str. 2 451, 1042 + 21, 2082

N. York Agents: Konkar Musitime New York Agencies Ltd.
17, Battery Place, N. Y. 10004 # 425, 6960 423102

KONKAR VICTORY CORPORATION MONROVIA

Piraeus Agents: Konkar Victory 39219

Piraeus Agents: Konkar Shipping Agency 5, A.
1, Skouze Str./2: 451-1042, 21, 2082

N. York Agents: Konkar Maritime New York Agencies Ltd.
17, Battery Place, N. Y. 10004 ± 425, 6950, 423102

KONRAD SHIPPING CO. LTD. INC. PANAMA Clark in 2791 Piraeus Agents: Rea Shipping Agency Co. 10, Akti Posseidonos E. 429,800, 21,2680

KONTARI COMPANIA NAVIERA S. A. PANAMA
Tzelepi 12367
Piraeus Agents: Halcoussis A. & Co. Ltd.
Miaouli 5q. & 3, lossonos Str. & 451, 7012, 21, 2435
London Agents: Halcoussis A. Str. & 6td.
41, New Broad Str. E. C. & 56, 7426, 888591

Tarzan 315
Piraeus Agents: P. Kontarinis
61, Filonos & Sotiros Strs, # 417.7609

KONTARINIS P. - KOURTIS S. PIRAL

KONTOMINAS P -SKRIVANOS CH. O. E. PIRAEUS Zephyros V. 397, Zephyros VI 534 Piraeus Agents: Kontominas P.-Skrivanos Ch. O. E. 70, Kolokotroni Str., k. 420-122, 21, 2719

HAVE YOU REMEMBERED TO ORDER YOUR 1974 EDITION OF THE GREEK SHIPPING DIRECTORY?

Daler Tour Sols dos Cier

Argo Castor 25293

Piraeus Agents Triship Agency Inc.
5, Bouboulinas Str., 2 421.018

N. York Agents Amership Agency Inc.
One State Str, Plaza N. Y. 10004 2 943.4670

KNOSSOS SHIPPING INC. MONROVIA

FFIDAVII OF JOHN GER GHTY IN RESPONSE

1) SUP LEMENT LAFFIDAVII OF HERBERT

LED DVICI.

State of New York) : 88.: County of New York)

JOHN R. GERAGHTY, being duly sworn, deposes and says:

This affidavit is respectfully submitted in response
to the supplemental affidavit of the plaintiff's attorney in
opposition, dated July 25, 1975.

The plaintiff's attorney makes several allegations in his affidavit concerning the testimony of Konkar Maritime New York Agencies, Ltd., which are contrary to the recollection of your deponent. Rather than waste the court's time delineating the areas in which my recollection differs with the recollection of the plaintiff's attorney, I respectfully request that the court allow me three (3) days after receipt of the transcript of the deposition to submit an additional affidavit in support of the defendants motion to dismiss. According to the affidavit of the plaintiff's attorney, the transcript of the deposition will be available on July 29, 1975.

There are certain facts not in dispute which I wish to bring to the court's attention.

Shipowner, Konkar Intrepid Corp., did not solicit business in the State of New York in the years 1974 and 1975. Its only vessel, the KONKAR INTREPID, never visited the State of New York during the years 1974 and 1975. Konkar Maritime New York Agencies, Ltd. never solicited any business on behalf of the shipowner during those years and it did not collect any

money from Gatx, the time charterer, which paid the charterhire directly into the shipowner's account at Chase Manhattan Bank. Konkar Maritime New York Agencies, Ltd. was authorized to draw checks against that account to pay for certain expenses such as provisioning the vessel and it occasionally forwarded expense money to the vessel's Master. The shipowner's Greek agent hired and paid the crew and operated the vessel. Konkar Maritime New York Agencies, Ltd. had no involvement in cargo transactions and the shipowner derived absolutely no income from the State of New York.

In summary, the plaintiff's attorney is claiming that the shipowner, Konkar Intrepid Corp. is subject to the jurisdiction of this court merely because it maintains a bank account here to secure a letter of guarantee, and disburses certain of its operating expenses from that account through a New York agent.

It is submitted that the shipowner, Konkar Intrepid Corp., is not doing business in the State of New York and that the action should be dismissed for the reasons stated in the notice of motion and the original affidavit and memorandum of law in support of the defendants' motion to dismiss.

JOHN R. GERAGHTY

Sworn to before me this Jyth day of July, 1975

Notary Part Soile of New York
No. 11 Soile of New York
No. 11 Soile of New York
County
March 30, 19

AFFIDAVIT OF ALIKI D. PERROTIS IN SUPPORT OF MOTION

				REPEBLIC OF GREECE	3	
HELLENIC REPUBLIC			PROVINCE OF ATTICA)		
CITY OF ATHENS		ss:	CITY OF ATHENS)	831	
	ATHENS		EMBASSY OF THE)		
			BHIED STATES OF AHERISA	>		

AFFIDAVIT

Aliki D. Perrotis, being duly sworn deposes and says:

- 1. That she is a shareholder of KONKAR INTREPID CORP., the owners of the Liberian flag vessel KONKAR INTREPID.
 - 2. That she is a citizen and resident of Greece and not a citizen or resident of the United States.
 - 3. That other shareholders of said KONKAR INTREPID CORP. are Penelope I. Paraschis, Constantine P. Karpidas and Ioannis S. Andropoulos who are citizens and residents of Greece and not citizens or residents of the United States.

Dated this 25 day of August 1975

Subteribed and sweet to before me, the undersigned consular officer of the United States of America at Athens, Greece, duly commissioned and qualified, this 25 th day of, length of 1975

A.D. PERROTIS

MICHAFL M MAHONEY

AFFIDAVIT OF CONSTANTINE P. KARPIDAS IN SUPPORT OF MOTION

HELLENIC REPUBLIC

CITY OF ATHENS SS

AFFIDAVIT

Constantine P. Karpidas, being duly sworn deposes and says:

- 1. That he is a shareholder of KONKAR INTREPID CORP., the owners of the Liberian flag vessel KONKAR INTREPID.
- 2. That he is a citizen and resident of Greece and not a citizen or resident of the United States.
- 3. That other shreholders of said KONKAR INTREPID CORP. are Penelope I. Paraschis, Aliki D. Perrotis and Ioannis S. Andropoulos who are citizens and residents of Greece and not citizens or residents of the United States.

Dated this Islady of August 1975

I J LC DF EREFCE

R .A. CE CF ATTICA

C... OF ATMENS

CMBASSY OF THE

UMITED STATES OF AMERICA

Dated this Islady of August 1975

SS:

CMBASSY OF THE

UMITED STATES OF AMERICA

Subscribed and sworn to before me,
the undersigned consular officer
of the United States of Assertes of
Athens, Greece, duly committees to
and emission, this after day of,
authors, 1975.

C.P. KARPIDAS

MICHAEL M. MAHONEY

Consul of the United States of America

AFFIDAVIT OF DIMITRI J. MARKIANOS IN SUPPORT OF MOTION

REPUBLIC OF GREECE
PROVINCE OF ATTICA
CITY OF ATHEMS
EMBASSY OF THE UNITED STATES OF AMERICA

DIM TRI J. MARKIANOS, being duly sworn, deposes and says:

I am a practicing lawyer in Athens, Greece, since 1956 and have been admitted to practice in all courts of justice including the Supreme Court of the Republic of Greece. I am a partner in the law firm of G. & N. L. Daniolos of 27-29 J. Drossopoulou Street, Athens 801, Greece, and I am a member of the Athens bar. The greatest bulk of our practice is connected with admiralty and maritime matters and we have been acting for a number of shipping companies and British insurance concerns.

I am asked to give an opinion on the question whether a Greek court would accept jurisdiction in a case where a Greek citizen, permanent resident of Greece, had entered in Greece into a contract of seaman's employment to serve on a Liberian vessel, owned by a Liberian corporation, such contract providing inter alia that it was to be governed exclusively be Greek law in combination with the collective agreement, which has force of law, between the Greek Shipowners' Union and the Panhellenic Seamen's Federation for ships under Greek flag and that, in the event of a working accident the Greek Law 551 applied and that any dispute arising out of the seaman's employment would be adjudicated by the Greek courts of Athens only and in accordance with Greek law to the exclusion of any foreign courts and law of any other country, which for the purpose of this agreement would have no jurisdiction; and where the aforesaid Greek seaman allegedly suffered an accident on July 19, 1974, while the vessel was in the navigable waters of the United States, received initial treatment for his injuries in the United States and was repatriated to Greece, where he received additional treatment by Greek physicians; and where it is assumed that the ship—owning corporation maintains an office and/or its principal place of business in Athens, Greece, that its shareholders are Greek citizens and residents of Greece and that they are not citizens or residents of the U.S.A. If the aforesaid seaman decided to bring a suit in the Greek courts for damages for personal injuries against the shipowning company as defendant would a Greek court hold that it has jurisdiction to try the case?

In my opinion there are three different and independent from each other grounds, each of which would be sufficient for a Greek court to accept jurisdiction in the above case. I base this opinion on the pertinent provisions of the Greek Code of Civil Procedure, which was enacted by Act No.44 of 1967, as amended by Act No.958 of 1971 and re-codified by Royal Decree No.657 of 1971.

I

As for the first ground of jurisdiction I should refer to Article 126 of Act No. 2783 of 1941 (Introductory Act to the Civil Code) which reads as under:

"Foreigners are subjected to the jurisdiction of Greek courts and can sue and be sued as the Greek nationals according to the existing provisions for the territorial competence of the courts",

and also to the following provisions of the Code of Civil Procedure:

" Article 3. § 1: Greek nationals and foreigners are

subjected to the jurisdiction of the cival courts, if there is a competence of a Greek court".

Article 22: "Territorially competent is the court in the area of which the derendent is domiciled, unless otherwin provided by the law".

Article 23: "If the defendant has not a domicile in Greece or abroad, competent is the court in the area of which he is resident. If the place of his residence is not known, competent is the court in the area of which he had his last domicile in Greece or, in lack of domicile, his residence."

Articlo 25: "\$1

§ 2. Corporate bodies and legal persons that can be litigants are subjected to the competence of the court in the area of which they have their seat".

It follows that under the above articles 3, 22, 23 and 25 of the Code of Civil Procedure, if, as it is assumed, in the above case the defendant company has an office and the main place of its business in Greece and more particularly in Athens, the courts of Athens will accept jurisdiction. The above view has been held by many judgments of the Creek courts. I may cite here Judgments No. 1072 of 1570 of the Court of Firaeus published in the Greek Commercial Law Review, volume 21 (1970) p.423, No.1858 of 1971 of the Court of Piracus (23 Co.mercial Law Review (1972) p.358), 10.960 of 1972 of the Yourt of Appeals of Athens (20 Nonikon Bema (=Logal Tribune) p.1064), No.333 of 1973 of the Court of Firacus (1 Greek Maritime Law Noview (1973) p. 274), No. 624 of 1973 or the Court of Piraeus (1 Greek Maritime Law Hoview p.419), No.1556 of 1973 (24 Greek Commercial Law Review (1973) p.387), No.3023 of 1973 of the Court of Appeals of Athens (2 Greek Maritime Law heview p. 455) and No. 1937 of 1974 of the Court of Athens (2 Greek Maritime Law Review p.345). All these judgments had to doal with Penamanian or Liberian companies and held that the respective courts had

jurisdiction to try suits brought against the said Panamanian or Liberian companies, if such defendants had their main place of business within the area (1.0. the territorial competence) of the respective court, even though their articles of association stated that the companies had been incorporated in Panama or Liberia.

II

As for the second ground of jurisdiction I should refer to Article 33 of the aforesaid Code of Civil Procedure, which roads as under:

"Article 33. Disputes concerning the existence and the validity of a contract or other legal act inpr vivos and all rights arising therefrom can be brought also before the court within the area of which lies the place where the contract or other legal act was entered into or where it is to be performed....."

man in question was entered into in Greece, the Greek court within the area of which lies the place where the contract was concluded is competent to try all claims arising out of the said contract. This view has also been held by e.g. Judgment No.64 of 1974 of the Court of Piraeus (25 Greek Compercial law heview p.85, 22 Komikon Bema p.539), which held that disputes arising out of a charter party can be brought before the court of the place where the charter party was entered into.

III

As for the third ground of jurisdiction I should refer to Amicles 42 and 43 of the said Code of Civil *rocedure, which provide as follows:

"Article 42. § 1. By an express or implied agreement of the litigant parties a non-competent regular court of

first instance may become competent, except in cases where the object of the law suit has not a pecuniary value. In disputes for which there is an exclusive competence an express agreement is required.

§ 2. An implied (tacit) agreement is deemed to exist, if the defendant, appearing at the first hearing in court, does not object on the grounds that the court is incompetent.

"Article 43. An agreement between the litigant parties by which a regular court becomes competent for future disputes is valid only if it is in writing and refers to a specific legal relation from which the said disputes may arise".

If, as it is assumed in this particular case, Plaintiff's contract of, employment contained a provision specifically providing that claims connected with any accident he might suffer would be tried before the Court of Athens having exclusive jurisdiction, this jurisdiction clause would be valid under the aforementioned provisions of the Code of Civil Procedure and the court of Athens would accept jurisdiction for such claims.

Furthermore Plaintiff's contract of employment is assumed to refer to the Greek Collective Agreement in force. The Greek Collective Agreement of May 1, 1971, as amended on Dec. 9, 1972, which was in force at the time of Plaintiff's alleged accident, provided in Chapter 17 that Greek courts would have exclusive jurisdiction in any dispute that might arise out of the contract of employment of each individual seaman. (This provision is also included in the Collective Agreement of March 10, 1975, presently in force). This provision has been incorporated by reference in the individual contract of employment of the Plaintiff in this case. It is the practice of the Greek civil courts under the new Code of Civil Procedure to accept jurisdiction in such cases and to the best of my knowledge and belief there

is no judgment of a Greek court to the contrary.

IV

I am aware of the judgment No.693 of 1962 of the Court of Appeal of Athens (Rikos v. Liralago Companie Armadora S.A. of Panama), published in the (Greek) Review of Labour Law, volume 21 p.789 and of the Judgment No.1337 of 1969 of the Court of First Instance (Labour Claims) of Piraeus (Kouseris v. Asturius Shipping Co. S.A. of Panama). Both these cases are irrelevant and not a licable to the present case, for the following reasons:

In the Bikos case (Judgment No. 693 of 1962) the plaintiff was Greek and the defendant a foreign company. The court held that a foreigner can be sued before a Greek court acording to the provisions about jurisdiction and comptetence of Greek courts in the same way as a Greek national. but on examining the facts it was found (a) that jurisdiction based on the demicile or residence of the defendant did not exist in that cure, as Plaintiff had admitted that the defendant company had its seat abroad, (b) that no evidence had been produced by Plaintiff to prove his allegation that it had been expressly agreed that his claim should be brought before the court of first instance a firacus. A third jurisdictional approach that was of importance in that case concerns jurisdiction for claims under a criminal act, which is not the case here. Finally, it must be remarked that that judgment was issued under the old Civil Procedure which has ceased being in force in 1968.

In the Rouseris case (judgment No.1337 of 1969 of Piraeus) the claim was dismissed on jurisdictional grounds, tecause Plaintiff failed to produce any evidence of his elegation that there was an agreement founding jurisdiction of the Greek courts. Moreover Plaintiff had not invoked jurisdiction on the grounds that the defendant company had

its real domicile or main place or business in Greece.

Consequently in both the above cases the courts refused to accept jurisdiction, because the facts were different from those assumed in the present case or were not proved to be true.

Athens, August 27, 1975

Dimitri J. Markianos

ADDITIONAL AFFIDAVIT OF HERBERT LEBOVICI IN OPPOSITION TO MOTION

STATE OF NEW YORK) ss.:

HERBERT LEBOVICI, being duly sworn, deposes and says:

That I have been in personal charge of the within matter on behalf of the plaintiff since its inception.

On August 29th, 1975, we received a copy of a letter dated August 27th addressed to Honorable Milton Pollack by Mr. Geraghty of KIRLIN, CAMPBELL & KEATING, Esqs. wherein Mr. Geraghty stated that he had complied with the court's instructions in requesting an opinion as to whether the Creek courts would accept jurisdiction "over Mr. Koupetoris' cause of action", and also requesting that the attorney should obtain additional proof that the shareholders of KONKAR are not citizens or residents of the United States.

On September 2, 1975 we were served with the "Supplemental Affidavits" which purport to answer the questions stated by Mr.

Geraghty to have been requested by the court.

With respect to the first of the two questions stated, that is, whether the Greek courts would accept jurisdiction bver Mr.

Koupetoris' cause of action", the lawyer's affidavit in effect states that the Greek courts would accept jurisdiction over the person of the defendant. It does not say that the Greek courts would grant jurisdiction of the subject of the action consisting of Mr. Koupetoris' cause of action pursuant to the Jones Act and alternatively the general Maritime Law.

Indeed, in a case entitled Lambiris v. Neptune Maritime

Company, and bearing number 999/1972 in the Court of First Instance
of Piraeus, Greece, the Greek court there in an opinion affirmed
by the Appellate Court, under number 3762/1973 states expressly
that it will not try a case pursuant to the United States law, in
that case, the General Maritime Law of the United States as incorporated in the law of the flag herein, the law of Liberia.

Despite the fact that the general Maritime Law of the United States
as incorporated in the Liberian law was expressly pleaded as the
basis upon which recovery was sought, the Greek court proceeded to
adjudge the case on the basis of a certain Law 551, a form of workmen's compensation law.

Just as surely as a Greek court will not follow the Liberian law incorporating the general Maritime Law of the United States, it would not grant a recovery under the Jones Act.

The fact that there is a form of recovery which Koupetoris could seek in Greece, is not to say that the Greek courts would accept the cause of action which Koupetoris seeks to assert herein.

Judge CROAKE in the case of <u>Pavlou v. Ocean Traders Marine</u>

<u>Corp.</u>, 211 F.Supp. 320, in an opinion approved by the Supreme

Court in <u>Hellenic Lines Ltd. v. Rhoditis</u> 398 U.S. 306, stated the matter exactly when he said:

"It is another matter to contend that a litigant who has a right created under the laws of the United States,

"may, because of facts and circumstances related to convenience and problems of proof, be relegated to a forum outside of this country."

Judge CROAKE then went on to indicate in keeping with the cases heretofore stated herein, that the Jones Act (and necessarily the general Maritime Law) having been properly invoked, there was no discretion to decline the jurisdiction.

With respect to the other matters referred to by the Greek lawyer, in which he asserts that a Greek court would have jurisdiction over the person of the defendant herein (a Liberian corporation) it is to be noted that in each of the three situations referred to by that lawyer, he finds it necessary for the corporate defendant to have a domicile, residence or principal place of business in Greece. The fact is that the papers before the court do not indicate any such presence in Greece by this Liberian corporation.

It is respectfully submitted that the within case is in all respects qualified to be retained as one of mandatory jurisdiction pursuant to the Jones Act and pendent jurisdiction pursuant to the Liberian law incorporating the general Maritime law of the United States. The defendants' motion should therefore be denied.

Sworn to before me this 3rd day of September, 1975.

Herbert Lchovid

Herbert Lebovici

Milton Pollack, District Judge.

Plaintiff, a Greek scaman, brought suit under the Jones Act, 46 U.S.C. §§ 688 et seq., and general maritime law to recover for injuries he allegedly sustained aboard the Konkar Intrepid on July 19, 1974 while the ship was in Baltimore harbor.

Defendant Konkar Intrepid Corp. (hereafter "KI"),
a Liberian corporation with principal offices in Athens,
owns the ship; defendant Konkar Maritime New York
Agencies, Inc. (hereafter "Agencies"), organized under
the laws of New York State, performed certain functions
on KI's behalf in New York until it discontinued business
in December 1974.

pursuant to Fed. R. Civ. P. 12(b)(2) and (5) for lack of jurisdiction over its person and insufficiency of service of process. Both defendants seek dismissal pursuant to Fed. R. Civ. P. 12 (b)(1) for lack of jurisdiction over the subject matter, or alternatively, pursuant to Fed. R. Civ. P. 12(b)(3) for improper venue on the doctrine of forum non conveniens. Finally, Agencies seeks dismissal

pursuant to Fed. R. Civ. P. 12(b)(1) and (6) on the ground that it is not properly sued herein under the Jones Act. since it neither employs plaintiff nor owns the ship on which his injuries occurred.

The motions to dismiss the complaint are granted, for plaintiff has consented to the dismissal of this suit against Agencies, and the Court declines subject matter jurisdiction of the plaintiff's claim against Konkar Intrepid Corp. for the reasons appearing hereafter.

1. Jurisdiction Over the Person of KI

Defendant KI's contentions concerning its amenability to process and the manner of service thereof are without merit. Process was served on Agencies as agent for KI pursuant to Fed. R. Civ. P. 4(d)(3). Agencies' transactions of business in New York on behalf of KI have been more than sufficient to satisfy the fairness criterion mandated by due process: the company maintained accounts in local banks; it paid for many of the ship's expenses, including wages, food and supplies; and it appointed husbanding agents for the Konkar Intrepid in other ports. Furthermore, KI itself apparently executed two mortgages on the ship in New York. See Hanson v. Dencla, 357 U.S. 235 (1958).

Whether process was properly served on Kt depends on whether Agencies was KI's "managing or general agent" within the meaning of Fed. R. Civ. P. 4(d)(3). While much of Agencies' activity on behalf of KI involved merely the collection and payment of accounts, it also exercised significant discretionary authority, notably in the appointment of husbanding agents. See Grammenos v. Lemos, 457 F.2d 1067 (2d Cir. 1972). In general, the managing agent for purposes of service or process is that person or entity in charge of those activities within the state which justify the exercise of personal jurisdiction over the defendant. Grammenos v. Lemos, supra, at 1072; Bomze v. Nardis Sportswear, 165 F.2d 33, 37 (2d Cir. 1948). The delivery of the summons and complaint to Agencies therefore constituted sufficient service of process on KI. 2. Jurisdiction Over the Subject Matter

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No diversity jurisdiction is present in this case under 28 U.S.C. § 1332 since both plaintiff and defendant KI are aliens. Joseph Muller Corp. v. Societe Anonyme de Gerance et d'Armement, 451 F.2d 727, 729 (2d Cir. 1971), cert. denied, 405 U.S. 906 (1972). Whether jurisdiction is conferred by 28 U.S.C. § 1331 depends on the applicability

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maritime law claim included in the complaint does not raise a federal question under § 1331 and at all events would be subject to the same choice of law criteria as is the Jones Act. Romero v. International Terminal Operating Co., 358 U.S. 354 (1959). Section 1333 does confer admiralty jurisdiction on the federal courts; however, its use is subject to the discretion of the Court. See, infra.

The focus of the Court's inquiry in respect of
the applicability of the Jones Act must be on the substantiality of the contacts of the controversy with the United

States. See Hellenic Lines v. Rhoditis, 398 U.S. 306, 309
(1970);
n.4 Moncada v. Lemuria Shipping Corp., 491 F.2d 470, 472

(2d Cir.), cert. denied, 417 U.S. 947 (1974). In Lauritzen
v. Larsen, 354 U.S. 671 (1953) and Hellenic Lines v. Rhoditis,
supra, the Supreme Court listed factors of possible significance which the Court might consider on this question.

While the relative weight to be accorded to each factor
varies, the inquiry involves: (1) the place of wrongful
act; (2) the law of the flag; (3) the allegiance or

domicile of the injured party; (4) the allegrance or base or operations of the shipowner; (5) the place where the employment contract was made; (6) the inaccessibility of a foreign forum; and (7) the law of the forum which has perfected personal jurisdiction.

of these elements four of the criteria have been accorded relatively little importance. These are (1) flag, (2) place of injury, (3) place where the seaman's contract was made, and (4) inaccessibility of a foreign forum. The allegiance of the parties and the shipowner's base of operations have been accorded the greatest significance.

See Moncada v. Lemuria Shipping Corp., supra at 473.

Thus, the benefits of the Jones Act have not been accorded in a suit against a foreign shipowner by a nonresident seaman who seeks redress for injuries sustained on a vessel of foreign registry where the foreign shipowner's major base of operations is outside the United States.

Although plaintiff initially contended that the majority of the stock of the defendant was owned or controlled by American citizens or residents, the defendant has submitted uncontroverted affidavits attesting that all shareholders of Konkar Intrepid Corp. are citizens and

of business is in Athens, and none of the members of the crew is an American citizen. In these circumstances, the happenstance that the accident occurred while the Konkar Intrepid was in American waters — the only contact the controversy has with the United States — is insufficient to invoke the Jones Act.

Since the Jones Act does not apply to this case and diversity jurisdiction is lacking, the law claim in the complaint may properly be and is dismissed for lack of subject matter jurisdiction. Dassigienis v. Cosmos Carriers & Trading Corp., 442 F.2d 1016, 1018 (2d Cir. 1971). Were the question one residing in the Court's discretion, but see, Bartholomew v. Universal Tankships, Inc., 263 F.2d 437, 443 (2d Cir. 1959), the facts herein would at all events lead the Court to decline jurisdiction of the law claim on forum non conveniens grounds. However, 28 U.S.C. § 1333 could confer admiralty subject matter jurisdiction over the claim for plaintiff's injuries. See Gilmore & Black, The Law of Admiralty 40 (2d ed. 1975) (suit may be brought under the admiralty jurisdiction where that is "visibly ... the only ground of federal jurisdiction").

The complete states that purediction is asserted by virtue of the Jones Act and the General Maritime Law. There is no reason to hold plaintiff to an election by his pleading to proceed solely at law. See Fed. R. Civ. P 9(h), 15(a); Doucet v. Wheless Drilling Co., 467 F.2d 336, 339 (5th Cir. 1972) ("plaintiff's choice of the law side was not an irrevocable one"); O'Neill v. Cunard White Star, 160 F.2d 446, 447 (2d Cir.), cert. denied, 332 U.S. 773 (1947) ("any ground of substantive jurisdiction will serve to support an action, regardless of the formal amendments which may be necessary to make it triable on one side or the other of the Court"). Of course, in the admiralty jurisdiction, plaintiff would not be entitled to the jury trial he requests, Fitzgerald v. United States Lines, 374 U.S. 16, 17 (1963), and the rule of decision would need be supplied by foreign law, for the general maritime law of the United States may no more be applied to a case of this type than may the Jones Act. Romero v. International Terminal Operating Co., 358 U.S. 354, 382 (1959) (same choice-of-law criteria apply to both Jones Act and general maritime law).

Nonetheless, where an alternative forum is available to the plaintiff in which all the sources of proof are available, a rederal district court has "unqualified discretion to decline jurisdiction in suits in admiralty between foreigners." Canada Malting Co. v. Paterson Steamships, 285 U.S. 413, 421 (1932); Massachusetts v. Missouri, 308 U.S. 1, 19 (1939); Caris v. Compania, 386 F.2d 155 (2d cir. 1967). Such a forum exists here.

The defendant Kf has submitted an affidavit from Greek counsel esserting that a Greek forum is available to the plaintiff. Defendant Kf has also agreed to consent to appear in Greece, to waive any defenses based on the statute of limitations or personal jurisdiction; and if necessary to post bond if plaintiff files suit in Greece within 90 days after entry of judgment of dismissal of the case at bar. Cf. Franciskatos v. Konkar Maritime Enterprises, 353 F. Supp. 402, 404 (S.D.N.Y.), affid.

471 F.24 714 (2d cir. 1972); Rodaliusz v. Orion Schiffahrts-Gesallschaft Reith & Co., 348 F. Supp. 777 (S.D.M.Y. 1972).

Given these commitments by the defendant KI, the Court declines to entertain jurisdiction in admiralty over this controversy. This exercise of discretion is

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proof and witnesses, familiarity with the applicable law on the parc of the forum Court and by the advisability of preclading a contribution to the congestion of the federal courts by a suit of so, little contact with the United states. See Gulf Oil Corp. 7. Gilbert, 330 U.S. 501 (1947); Caris v. Compania, supra.

The motions to dismiss this suit are hereby granted for the reasons indicated above. Complaint dismissed.

SO ORDERED.

October 31, 1975

Milton Pollack

UNITED STATES DISTRICT COURT

SOURCE DISTRICT OF NEW YORK

NECTARIOS KOUPETORIS,

Fe/

Plaintiff

-against-

KONKAR INTREPID CORP and KONKAR MARITIME NEW YORK AGENCIES, LTD.,

Defendants

Deposition of the defendants by

SOTIRIS TSELENTIS, taken by the plaintiff

pursuant to notice dated 7/7/75, at the

ofices of Kirlin, Campbell & Keating, Esqs.,

120 Broadway, New York, N. Y., on Wednesday,

July 23, 1975 at 11:10 a. m., before Michael

Gruber, a Stenotype Reporter and Notary Public

within and for the state of New York.

DOYLE REFORTING, INC.
CERTIFIED STENOTYPE REPORTERS
132 HASBAU STREET
NEW YORK, N. Y. 10000

TELECONE HANDLAY AGEST

Appearances:

LEBOVICI and SAFIR, ESQS.,
Attorneys for plaintiff,
15 Maiden Lane,
New York, New York. 10038

By: HERBERT LEBOVICI, ESQ., of Counsel.

KIRLIN, CAMPBELL & KEATING, ESQS., Attorneys for defendants 120 Broadway, New York, New York. 10005.

By: JOHN R. GERAGHTY, ESQ., of Counsel.

and between the aftorneys for the respective parties herein, that the sealing, filing and certification of the within deposition be waived; that such deposition may be signed and sworn to by the witness being examined before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the officer before whom said deposition is taken.

IT IS FURTHER STIPULATED AND AGREED

that all objections, except as to form, are

SOTIRIS TSELENTIS, called as a witness, having been first duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY MR. LEBOVICI:

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Q Please state your name and address for the record.

A Sotiris Tselentis, 11 Pell Terrace, Garden City, New York.

Q Mr. Tselentis, you are vice president of Konkar Maritime New York Agencies, Ltd?

A Yes, I was, yes.

Q You were. Are you still?

A Yes, I am still.

You are testifying on behalf of Konkar
Maritime New York Agencies, Ltd., as their vice president,
is that right?

A Yer.

In response to the notice, which is dated and 7, 2075, right?

A Yes.

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I believe we agreed that the ship in this case is owned by Konkar Intrepid Corp.?

A Yes.

Q That is a Liberian corporation, is that right?

A Yes, sir.

Q This is the only ship that Konkar Intrepid Corp. ownes, is that right?

A Yes.

Q You are personally familiar with these matters? If you don't know the answer, it's all right to say so.

A Yes, I do know.

Q Konkar Maritime New York Agencies, Ltd., in 1974, was acting as agent for Konkar Intrepid Corp.?

A Yes, in New York, yes.

Q Were they acting as such agents pursuant to any written agreement between Konkar Intrepid Corp. and Konkar Maritime New York Agencies, Ltd?

 Λ I believe there is an informal agreement between the two.

MR. GERAGHTY: He wants to know if there is a written agreement. Is there an oral

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agreement or a written agreement.

THE WITNESS: I don't think there is a written agreement.

Q Who would know if there is a written agreement or not?

A Well, I should know.

MR. GERAGHTY: I don't think there is a written agreement, is there?

THE WITNESS: I don't think so.

MR. GERAGHTY: If there is a written agreement, I will let you know. He will have to check, when he goes back to the office.

THE WITNESS: Sometimes there are certain things that --

If there is not a formal written agreement,
Mr. Tselentis, was there any written correspondence
with respect to the understanding of the against by
Konkar Maritime for Konkar Intrepid?

A I don't know. I joined the firm around '70 and I found it there.

Q Konkar Maritime New York Agencies has been acting for Konkar Intrepid Corp. since 1970 in any event?

A At that time -- I don't know whether the Intrepid

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was built at that time. I don't know. Konkar acted since the day that the ship was built. If it's '70, then it was in '70. If it was '71, it was in '71.

Q Fair enough. You state in your affidavit that the stockholders of Konkar Intrepid Corp. are four gentlemen known respectively as Karpidas --

A There are not gentlemen. The two girls -Let me explain to you.

Mrs. Perrotis and Mrs. Paraschis.

Originally there was Karpidas and Andropoulos, they have there.

Mr. Andropoulos died last year.

The two girls, are the --

Q That is Penelope Paraschis and Aliki Perrotis?

A Yes.

Q Do you know whether the stock of Konkar Interpid Corp. is in the name of particular owners?

A I don't know.

Q That is a Liberian corporation? I think I asked that before.

A Yes.

Q Most frequently, Liberian corporations issue shares, isn't that so?

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is.

A I don't know. I don't have much experience.

MR. GERACHTY: Just ensure him en autono,

Mr. Tselentis.

Q Have you personally met and are you personally acquainted with Mr. Karpidas and Mr. Andropoulos?

A Yes.

Q Do you know whether any of these four persons whom you have named, Karpidas, Paraschis, Perrotis and Andropoulos, in addition to the Greek citizenship, which they claim, are or are not citizens of the United States?

A They are not citizens of the United States.

Q How do you know that?

A They are Greeks. They live in Greek. They have a Greek passport.

Q That doesn't prove that they couldn't get a United States passport, also.

MR. GERAGHTY: He is talking from his knowledge. Don't badger him, please.

MR. LEBOVICI: I am not badgering him.

I am asking him what the source of his knowledge

Q Do you know whoth mor not to an people

A To day, of Leagen. I believe the whole name is

2	GATY Leasing and Shipping Corporation of London.
9	That is a subsidiary of Oswego Navigation
1	Corporation, is it not?
5	MR. GERAGHTY: If you know.
6	A I don't know.
7	Q Is that a Liberian corporation?
8	MR. GERAGHTY: If you know.
9	A I don't know.
10	Q Is it an American corporation?
11	MR. GERAGHTY: If you know.
12	A I don't know. But I think their main office is in
13	London.
11	Q Do you have a copy of the charter?
15	A Yes, we have a copy of the charter.
16	Q What was the beginning date of the perform-
17	ance of that charter by the Intrepld?
18	A I believe 1971. I'm not sure.
10	Q Do you know what the termination date of
-()	that charter was?
91	A I know the duration. Eight years.
	Q So it's still under that charter?
.::	A It continues under that charter.
	O Did Konkar Maritime execute that charter

to behalf of Kenkar Intrepid Corp.?

2	A I have to look at the charter party.
3	MR. LEBOVICI: Is there any reason it
4	cannot be produced?
5	MR. GERAGHTY: I have to discuss it with
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. 7	MR. LEBOVICI: Its production is now
8	demanded.
9	Q Did that charter provide to whom the charter
10	hire was to be paid?
11	A The charter hire was to be paid to Konkar Intrepid
12	Corp.
13	Q Where was that charter hire collected?
14	A Originally in this country and then went to
15	Greece and then back into this country.
16	There are things that are done in Athens
17	with the assignment. It's assigned something to
18	do with
19	Q You say in your affidavit that Konkar
20	Intrepid Corp. collected moneys. Rather Korkar
21	Maritime collected moneys for Konkar Intrepid Corp.,
22	is that right?
23	A Yes.
21	Q The moneys you collected were in any event,
25 .	the charter hires pursuant to that charter, isn't that

right?

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A The charter hire is placed in an account by the charter. They don't come to me and give me a check which I put in the bank. It has an assignment.

Q What is the account in which that charter hire is paid?

A It's paid to the cash collateral account with Chase Manhattan Bank.

Q That arrangement was in effect, in July of 1974?

A Yes.

Q What was the name on that cash collateral account?

A Konkar Victory Corporation.

Q Konkar Victory Corporation, was that owned by the same principals who owned the Konkar Intrepid Corp.?

A I believe they are the same principals, yes.

Q As a matter of fact, the same principals owned at that time five vessels and one in building, is that right.

MR. GERAGHTY: Don't answer that.

I show you this page and the title page from the Greek Shipping Directory and ask you if that is correct, referring to the page.

2	MR. GERAGHTY: Would you mark that, please?
3	MR. LEBOVICI: Certainly.
4	(Page from the Greek Shipping Directory
5	and title page marked Plaintiff's Exhibit No. 1
6	for identification as of this date.)
7	MR. GERAGHTY: He just wants to know if
8	that is accurate, if
9	MR. LEBOVICI: I want to know if Konkar
10	Maritime New York Agencies is correct.
11	MR. GERAGHTY: You want to know if it
12	listed these ship owners in New York
13	MR. LEBOVICI: That is the first question.
14	MR. GERAGHTY: Go ahead and answer that.
15	Did Konkar Maritime New York Agencies,
16	Ltd. represent those various ship owners in 1974?
17	Q And ships?
18	A In '74, yes.
19	Q Continuing, I show you a copy of page 240
20	of the Greek Ship Owners Register, as distinguished
21	from the Greek Shipping Directory.
22	MR. CERAGNTY: Can we have that marked,
23	too, please?
21	MR. LEBOVICI: Certainly. We will mark
25	this Exhibit 2.

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Q I call your attention particularly to the entry on that page, 240, of Exhibit 2, with respect to Konkar Intrepid Corp., Mr. Tselentis.

(Document handed to witness.)

A Yes, I have seen that.

Q Is that entry correct, as far as you know?

A Yes.

Q When the entry shows the address of the Greek Agent for Konkar Intrepid to be Konkar Shipping Agency S.A. at -- one Skouze Street, is that correct?

A I don't know if they are still in Skouze.

Q This is the 1974 register.

A That must be correct, because they moved.

O Is that the company with whom you communicated on behalf of the Konkar Intrepid, the vessel?

A Yes.

Q During 1974?

A Yes.

Q That is the Konhar Shipping Agency, Inc.?

A - Yes, and were the owners, who are in another

25 location in Athens.

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Mhan you say that you expended, disbursed moneys for the Kaphan and the La 1974, did you obtain those moneys from that Konkar Victory account, at the Chase Manhattan Bank?

A The moneys are released immediately to the Konkar Intrepid account, from Chase. It is a convenience.

MR. GERACHTY: Is there one account or two accounts?

THE WITNESS: There is one cash collateral account for convenient purposes. From this account comes in, the Intrepid hire and then it is released to the Konkar Intrepid Corp. account with Chase.

Q The Konkar Intrepid Corp. had a separate account with Chase, into which the money went from the Konkar Victory account?

A Yes.

Q Who were authorized to sign checks on the Konkar Intrepid account, at the Chase Bank?

A We have four or five authorized signatures.

Q Are you one of the authorized signatories?

A Yes.

Q Were you bloomy're the expenses of the

Konkar Intropid ...

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that.

MR. LEBOVICI: It says he paid the moneys for the Konkar --

MR. GERAGHTY: Some of the expenses.

You are assuming something. It's a misleading question.

You said when you pay the expenses.

They didn't pay all the expenses of the vessel.

Q Did you pay any of the expenses of the Konkar Intrepid from that Konkar Intrepid account at Chase Manhattan Pank?

A Yes, we did.

Q The expenses that were paid from the Konkar Intrepid account were expenses that were paid to the vessel, to Konkar Intrepid, the ship, is that right?

A From the Konbar Intrepld Corp. account we pay expenses of the Konbar Intrepld Corp.

Q Which means the ship itself, the Konkar Intropid, in the allowing

A Yes.

!	
a	Q Will you list some of the expenses, indicat-
	in a wind of expenses that you were paying from that
4	Konkar Intrepid account?
5	A Many replace stalls, engine and provisions.
6	Q Did you supply money to the master, from
7	time to time?
8	A We do supply.
9.	Q Do you know whether or not the money
10	supplied to the master was used to pay wages part of
11	the time or all of the time?
12	A I presume.
13	Q The rest he used for the expenses of the
11	vessel, is that right?
15	A No, the master does not make any expenses,
16	except fresh provisions in a small port.
17	Q Where was the vessel trading, let's say,
18	between May of 1974 and let's say August of 1974, for
19	the present?
1,	A The trading of the vessel was in the hands of
21	the time charter. He directs the vessel. We trade
	for him. We collect the rent.

Exactly. What I want to know is, do you below where the vessel was going during that period of

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2	Λ	Yes, we have to know, because we have to service
3 .	the v	ercel.
4		Q Now the question is: Where was the
5	vesse	l going between that period of time?
6		THE WITNESS: I have to produce an
7		itinerary.
8		MR. LEBOVICI: Off the record.
9		(Discussion off the record.)
10		Q In July of 1974, the vessel was in Balti-
11	more,	is that right?
12	Α	Yes.
13		Q Did you know where the vessel had come from
11	at th	at time?
15	Α	I believe from Western Europe.
16		Q From Western Europe?
17	Α	I think so.
18		Q Then it went to New Orleans?
0	Α	Yes.
20		Q From New Orleans where did it go, if you
1	recal	1?
2.		MR. GERAGHTY: Just testify from your
.71		recollection.
21	f:	It went for Japan. It went for Japan or the

For Work some place.

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Q Did the vessel have an agent in Baltimore? A Not any -- no. The charterer's agent is usually handling the cases of a time charter vessel.

Q Do you know who the vessel's agent was in Baltimore, whether you appointed it or somebody else appointed it?

A No, we did not appoint an agent in Baltimore.

Q When the vessel went to New Orleans, do you know who the agent was there?

A It could be Hanson and Tidman. It was not our agent, it was the charterer's agent.

Q You say that you retained husbanding agents.

A When it's necessary.

Q Fair enough.

A In the particular of the Interpid, we have never appointed the husbanding agent in this country, since the beginning of the charter.

Q Did you you appoint any husbanding agent outside of the United States, while you were agents for the Intrepld?

A Once or twice.

Uhen you appointed those agents, those agents, if they expended moneys in whatever port the vessel

Q With respect to the moneys that were taken or paid -- I imply nothing improper -- with respect to the moneys that came from the Konkar Victory account into the Intrepid account, there were paid such expenses of the vessel as Konkar Maritime was called upon to pay, plus your fees for services rendered as agent and then there could be some money left over, is that right?

A Yes.

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Q Did you ever pay anything besides expenses for the vessel and fees for yourself, to anyone outside of the owners?

A No.

Q So that what was left over, belonged to the owner?

Λ Yes.

It would be remitted to the owner?

		Tselentis	20
2	A	Yes.	
3		Q Dia you do this periodically?	
4	Α	Yes.	
5		Q In other words, periodically, you accou	unted
6	to th	ne owner for the moneys?	
-7	A	Definitely, we accounted to the owner, definition	itely,
8	for t	the collections and the payments, of course.	
9		Q How often did you make those accounting	gs,
10	once	a month	
11	A	Every month.	
12		Q Was that accounting kept in the form	of
13	what	is customarily called the voyage account?	
14	A	No.	
15		Q The voyage account is something else.	
16	A	We don't keep any voyage account.	
17		Q What you gave the owner was a list of	your
18	expe	nditures during the period	
19	А	The cash book. Receipts and payments, with	
20	all	the exports, put them together, with the conci	lia-
21	tion	of the bank account and it goes to the owner	
22		Q The balance would belong to the owner?	
23	٨	We didn't give them the balance as it was	
21		Q You didn't give that to them every mon	th?
77.	H		

It was included in the thing. We always have to

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keep something to keep us along, the cash flow.

At the end of an accounting period, you would tell the owner, we spent so much, we collected so much, there is so much left over, right?

A Right.

Q Any money not expended belonged to the owner at the end?

A Yes.

MR. GERAGHTY: I think all the money belonged to the owner.

MR. LEBOVICI: The money that had been disbursed didn't belong to the owner any more.

MR. GERAGHTY: After it had been disbursed, correct.

Q Was this receipt of moneys from the Konkar Victory account into the Konkar Intrepid account made in connection with a mortgage which Chase Manhattan Bank had on any of the vessels whose names began with the Konkar Intrepid?

MR. GERACHTY: You are talking about the Konkar Intrepid?

MR. LEBOVICI: No.

MR. GERAGHTY: I am going to limit you to the Konkar Intrepid.

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2	Q Was there a mortgage of which Chase, the
3	bank, was a mortgagee?
1	A No, the bank is not a mortgagee.
5	Q Pursuant to what agreement did Konkar
6	Intrepid Corp. get moneys from the Konkar Victory
7	Corporation?
8	A I think I don't understand the question, I'm
9	sorry.
0	Q If the charter hires were paid in the
1	first instance, to the Konkar Victory Corporation,
2	there must have been some agreement which made it
3	appropriate for Chase Manhattan Bank to release moneys
4	to the Konkar Intrepid Corp.
5	A There is an agreement between the owners and
6	Chase for this cash collateral account, which involves
7	a written guarantee, given by Chase to the owners.
8	Q Does Konkar Maritime corporation have a
0	copy of that agreement?
0	MR. GERAGHTY: Do you have it or not?
,	THE WITNESS: It must be in Athens.
	MR. GERAGHTY: Did you have anything to
23	do with that agreement?
: 1	THE WITNESS: We discussed it with Chase,

because we have it here, right? But everything -89a-

...

has personal guarantees and everything like that, from Greece.

Q When the Konkar Intrepid came to Baltimore in '74, did it bring a cargo?

A See, we don't follow when a vessel is time chartered, you're not close to what he does, really. Probably it brought cargo or it discharged cargo.

I can look it up and let you know about that.

MR. LEBOVICI: I would like a copy of
the computings, however they are called, by
Konkar Maritime to whoever the accounting was
sent, the monthly accountings, that Mr. Tselentis
referred to previously.

Q When the vessel was in Baltimore did anyone from Konkar Maritime attend the arrival of the vessel there?

A No.

Q When it was at New Orleans, as distinguished from Baltimore, did anyone from Konkar Maritime attend the vessel while it was in New Orleans?

A. No.

Q Did the relationship between Konkar Intrepid and Konkar Maritime, as you have described it, continue substantially the same until the end of 1974?

A Yes.

MR. GERAGHTY: From when?

MR. LEBOVICI: From July, is what I am talking about. This accident occurred in July.

MR. GERAGHTY: I wanted to make it clear.

Q These arrangements which you have described, were in effect when the process was served in October of 1974?

A Yes.

Q Did Konkar Maritime receive any advice from the vessel that Koupetoris had been injured?

A Yes, we did receive --

MR. GERAGHTY: That's all. You have answered his question.

Q Do you recall whether or not he received treatment for his injury in Baltimore?

A Yes, he was in the hospital.

Q Did Konkar Maritime pay for the medical treatment that he received at Baltimore?

A The medical treatment I believe was paid by the time charterer and then he submitted to us --

Q The bill?

A By deducting from the hire.

Q Exactly. So that when the charter hire was

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paid, after the rendition of that bill, the Konkar Victory account, received that small less for the charter hire, is that right?

A The Konkar Intrepid Corp., yes.

The Konkar Victory received it and Konkar Intrepid received it from Victory?

A This is a --

Q Bookkeeping transaction?

A Yes. A bookkeeping transaction with the bank.

MR. GERAGHTY: Just answer his questions,

Mr. Tselentis.

When Koupetoris was discharged from the vessel at New Orleans, were the expenses of his discharge, let's say of his repatriation, similarly deducted from the charter hire?

A Similarly.

Q Then the charter hire received here had that much less in it?

A Yes.

Q Were there other expenses, Mr. Tselentis, that the charter similarly had a right to deduct from the charter hire, when it paid the charter hire.

A No, they don't. Only the owner's expenses.

Q What other owner's excesses did they have

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a right to deduct from the charter hire?

A The vesses news water, the water is for owner's account.

Q The charter hire would be deducted by that amount?

A Yes. The vessel makes telephone calls, the telephone calls are deducted from the amount. The captain takes a taxi for his personal use or to go to the doctor, many crew members expenses that they deduct.

Q If the vessel took fuel, for example, would that be for the charterer's account or the owner's account?

A Charterer's account.

Q That is by specific arrangement in the charter?

A Any ship that is time chartered, it's understood that the voyage expenses are for the charterer's account. Only the vessel expenses are for owners' account.

Q Is it fair to say, Mr. Tselentis, that all the expenses of the vessel that were charged to the owner, were either paid by the time charterer or from the Konkar Victory and Konkar Intrepid accounts?

MR. GERAGERY: You are talking about the

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crew's wares and all those expenses?

MR. LEBOVICE. Yes.

A There are many things that are not paid like that.

Q Without trying to extend the inquiry at great length, you told us this arrangement continued from July to December.

A Yes.

Q What I am asking now is, had the same arrangement been in effect between January and July of 174?

A Yes.

Q So that for the whole year, this was the arrangement under which Konkar Maritime operated with Konkar Intrepid Corp.?

A Correct, yes.

MR. LEBOVICI: No further questions.

EXAMINATION BY MR. GERAGHTY:

Q Who signed the crew aboard the Konkar Intrepid, during the year 1974?

A Konkar Shipping of Paris.

Q Who paid the crew's wages?

A Konkar Shipping it Paris.

Q You stated before that Konkar New York

Involving the Konker Intender

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FURTHER EXAMINATION BY MR. LEBOVICI:

Q often did the master render his account?

A He renders it to Paris.

Q I didn't ask you that. I asked you how often he renders his account.

MR. GERAGHTY: Do you know how often?

A Every two months, I think.

Q In that account, he would have to account for the moneys he received from the Konkar Intrepid Corp.?

A From here or from there.

Q Right. Mr. Geraghty just asked you whether or not you were involved in 1974 in any cargo transaction. What did you understand him to mean by cargo transactions?

A Whenever we have the run of the ship, whether we have discharged the ship --

Q Obviously not, because that is the charterer's obligation, right?

A Right.

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2	Q Was the Konkar Intrepid a cargo vessel or
3	a tank vessel?
4	A A cargo vessel. It's a bulk carrier.
5	Q Was the Konkar Intrepid the subject of
6	any mortgage at the Chase Bank?
7	MR. GERAGHTY: At what time?
8	MR. LEBOVICI: 1974.
9	A A mortgage, no.
10	MR. LEBOVICI: No further questions.
. 11	(Time noted 12:30 p. m.)
12	
13	Sotiris Tselentis.
14	Subscribed and sworn to
15	before me thisday
16	of1975.
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ITINERARY

1974

Down malban (Australia)	1/16 24/74
Port Talbet (Australia)	1/16-24/74
Tubarao (Brazil)	2/6 -11/74
Dunquerque (France)	2/26-3/12/74
N.Orleans (U.S.A)	3/26-4/3/74
- Houston "	4/4 -4/6/74
Amsterdam (Holland)	4/21-4/26/74
- Baton Rouge (U.S.A)	5/10-5/13/74
Amsterdam (Holland)	5/27-5/31/74
Tubarao (Brazil)	6/13-6/18/74
Dunkirk (France)	7/2 -7/6/74
Seven Islands (Canada)	7/15-17/74
<pre>>Baltimore (U.S.A)</pre>	7/21-7/24/74
New Orleans (U.S.A)	7/29-8/13/74
Turkish Straits (Turkey)	8/31-9/1/74
Constanza (Rumania)	9/1-9/21/74
Turkish Straits (Turkey)	9/22
Piraeus (Greece)	9/23-9/23/74
Seven Islands (Canada)	10/5-10/7 /74
Baltimore (U.S.A)	10/11-10/14/74
-Norfolk "	10/14-11/6/74
Cristobal (Panama)	11/10
Balboa "	11/12
Kobe (Tapan)	12/6
Sakaide (Japan)	12/20-20/74
Dampier (Australia)	12/30-1/1/75

1975

Trieste (Italy)	2/5-2/8/75
Bagnoli "	2/9-2/21/75
Naples "	2/22-3/4/75
Buchanan (Monrovia)	3/13-3/15/75
Philadelphia (U.S.A.)	3/27-4/6/75
Norfolk	4/7-15/75
Cristobal (Panama)	4/20-4/21/75
Balboa "	4/22
Kobe Roads (Japan)	5/15
Hirohata (Japan)	5/15
Kobe (Japan) Sailed	5/17/75
Dampier (Australia)	5/26-28/75
Rotterdam (Holland)	6/30-7/2/75

MICROFIL M

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NECTARIOS KOUPETORIS

Plaintiff
-against
KONKAR INTREPID CORP., and
LONKAR HARITIME NEW YORK AGENCIES,
LTD.

Defendants

12(b)(3), of the Federal Rules of Civil Procedure, and the said motions having come on to be heard before the Honorable Milton Pollack, United States District Judge, and the Court thereafter of October 31, 1975, having handed down Its ipinion granting the said motions, it is,

ORDERED, ADJUDGED and DECREED: That defendants KONKAR INTREPT.

CORP., and KONKAR MARITIME NEW YORK AGENCIES, LTD., have judgment
against plaintiff NECTARIOS KOUPETORIS dismissing the complaint.

November 7, 1975

Raymond F. Burghard

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

(SEAMAN'S CASE)

NECTARIOS KOUPETORIS,

74 Civ. 4684 (MP)

Plaintiff,

- against -

KONKAR INTREPID CORP. and KONKAR MARITIME NEW YORK AGENCIES, LTD.,

NOTICE OF APPEAL

Defendants.

5 1 R S :

NOTICE IS HEREBY GIVEN that the plaintinf hereby appeals to the United States Court of Appeals for the Second Gircuit from the opinion of Judge Milton POLLACK dated October 31, 1975 and the Judgment of the Court entered on November 7, 1975 declining jurisdiction of the case and dismissing the complaint.

Dated: New York, New York November 28, 1975

LEBOVICI & SAFIR
Attorneys for Plaintiff
Herbert Lebovici

A Member of the Firm Office & P.O. Address 15 Maiden Lane New York, N.Y.

TO: KIRLIN, CAMPBELL & REATING Actorneys for Defendants One Twency Broadway New York, N.Y. 10005

CLERK OF THE UNITED STATES DISTRICT COURT Southern District of New York Foley Square New York, N.Y. -100a-

DEFEND NI ' NOTICE OF CROSS-APPEAL SIRS:

NOTICE IS HEREBY GIVEN that the defendant Konkar Intrepid Corp. hereby cross-appeals to the United States Court of Appeals for the Second Circuit from the opinion of Judge Milton Pollack dated October 21, 1975 and the judgment of the court entered on November 7, 1975 insofar as the court held Konkar Intrepid Corp. is subject to the personal jurisdiction of this court and that it was validly served with process herein.

Dated: New York, New York

December 12, 1975

KIRLIN, CAMPBELL & KEATING Attorneys for Defendants

A Member of the Firm

120 Broadway

New York, New York 10005

TO: LEBOVICI & SAFIR Attorneys for Plaintiff 15 Maiden Lane New York, New York 10005

> CLERK OF THE UNITED STATES DISTRICT COURT Southern District of New York Foley Square New York, New York

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LEBOVICI Koupstoris v. Konkar

STATE OF NEW YORK

SS.

COUNTY OF NEW YORK)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the <a href="mailto:lightchar.com/li

KIRLIN, CAMPBELL & KEATING, ESQS.

attorney(s) for

Appellee

in this action, at

120 Broadway, New York, N.Y.

Robert Balley

Sworn to before me, this 12

day of Tan

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WILLIAM BAILEY Notary Public, Stat e of New York

A. 43-0132945

Commission Expires March 30, 1976